

Tax & Legal Weekly Alert

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Legislative proposal in connection with the General Data Protection Regulation – Provisions that derogate from the European rules

The Romanian Parliament drafted a legislative proposal regarding the applicable measures for enforcing the (EU) Regulation 2016/679 issued by the European Parliament and the Council on the protection of natural persons with regards to the processing of personal data ("**General Data Protection Regulation**").



Legislative proposal in connection with the General Data Protection Regulation – Provisions that derogate from the European rules

The General Data Protection Regulation will become directly applicable in Romania starting 25 May 2018, and it allows member states to adopt national regulations meant to enforce the European enactment in connection with the specific of the national framework.

Under these circumstances, the Romanian Parliament has drafted a legislative proposal regarding measures for implementing the General Data Protection Regulation ("**Legislative proposal**"), which was registered on 14.03.2018 at the Senate, for public debate.

In summary, the Legislative proposal regulates:

- processing of certain special categories of personal data (i.e. genetic, biometrics and health data) and the national identification number;
- designation and duties of the data protection officer;
- accreditation of certification bodies, applicable framework for corrective measures and other sanctions;
- processing performed for journalistic purposes and the purposes of academic, artistic or literary expression;
- processing of personal data in the context of employment relationships.

The approach of the lawmaker is questionable, with respect to the provisions included under the Legislative proposal, which derogate from the provisions of the General Data Protection Regulation and restrain the possibility to process certain categories of personal data, either for the purpose of performing an automated decision process, or for creation of profiles.

The Legislative proposal prohibits processing of genetic, biometrics or health data for the purpose of an automated decision process or for the creation of profiles, except for the processing performed by public authorities in the conditions determined under the law. Furthermore, the consent of the data subject is not able to surpass this interdiction. It remains to be seen to what extent the provisions of the Legislative proposal will be kept in such form, following the public debates.

Another important change is represented by the legal basis for processing the national identification number, including the collection or disclosure of the documents that contain it. Unlike the current regulation in force, according to the Legislative proposal, the processing of the national identification number is no longer provided in such a restrictive manner. Thus, pursuant to the Legislative proposal, the processing can be justified in all situations provided under art. 6 (para 1) of the General Data Protection Regulation, including legitimate interest pursuit by the controller, with the enforcing of certain safeguards (e.g. appointment of a data protection officer; establishing of certain retention terms; training of the persons who, under the surveillance of the controller, processes the data; etc.).

Moreover, it should be mentioned that the monitoring in the context of employment relationships, by means of electronic communications and video surveillance, is regulated under the same matter. The latter measure (i.e. video surveillance) represents a more intrusive process than the monitoring performed through electronic measures (such as the monitoring of Internet traffic). The Legislative proposal sets up additional conditions for these types of monitoring, such as:

- important and well-grounded justified activities to be envisaged;
- the interest of the employer prevails over the interests, rights and liberties of the data subjects;

- informing the employees prior to the monitoring;
- consulting with the syndicate;
- other forms or modalities less intrusive have not proven their efficiency;
- the retention duration of the data is proportional with the purpose of the processing and does not exceed 30 days, except for the situations in which the law provides otherwise, or the cases in which there are well grounded cases.

With respect to sanctions applicable to public authorities and bodies, those are derogatory from the ones applicable to private entities, as, for the former, the lawmaker has provided a warning or fine of up to 200,000 Lei, proportional with the offence committed.

In order to access the entire text of the Legislative proposal, please visit the site of the Romanian Parliament (Senate), at the following link:

<https://www.senat.ro/legis/lista.aspx>.

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