

**LEGAL ALERT, July 18<sup>th</sup>, 2018****The law regarding the implementation of the GDPR**

The President of Romania promulgated on 17.07.2018 the law regarding the implementation of the GDPR<sup>1</sup> (“**Implementation Law**”). According to article 16 of the Implementation Law, it enters into force within 5 days after it was published in Official Gazette of Romania, Part I. The most relevant provisions introduced by the Implementation Law refer to: *(i)* processing of the genetic, biometric and health data; *(ii)* processing of a national identification number; *(iii)* monitoring of employees at the work; *(iv)* processing in the context of a duty that serves a public interest.

***(i) Processing of the genetic, biometric and health data***

The Implementation Law impose particular restrictions concerning the processing of the genetic, biometric and health data for the purpose of creating an automated decision-making process or profiling. Such processing will be allowed only with the consent of the data subject or on the basis of an explicit legal provisions, with the establishment of appropriate safeguards for protecting the rights, freedoms and the interests of the data subjects.

***(ii) Processing of a national identification number***

The Implementation Law includes the personal identification number (PIN) in the larger category defined as national identification number, which also consists of social health insurance number, the series and number of the identity card, the driving license number, the passport number, but also any other number with general applicability that serves to the identification of individuals in particular evidence systems. In contrast to the prior regulation, the Implementation Law stipulates that a national identification number can be processed on any of the legal grounds provided by article 6 of GDPR.

However, processing of a national identification number on the basis of a legitimate interest pursued by the controller can only be carried out if additional guarantees are implemented by the controller:

- The implementation of organizational and technical measures for ensuring the minimization, security and confidentiality of the processing;
- The appointment of a data protection officer (DPO);
- The establishment of data retention periods;
- Periodical training of the persons which take part in the processing activities.

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<sup>1</sup> *The Law regarding the implementation measures of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.*

***(iii) Monitoring of employees at the work***

In accordance with the Implementation Law, the monitoring of employees via electronic means of communication and/or via video surveillance, when such a processing is being carried out on the basis of a legitimate interest pursued by the controller, is only permitted with the strict observance of the following:

- The employer must have justified legitimate interests that are not overridden by the rights and freedoms of the data subjects;
- The employer must explicitly and completely inform the employees prior to implementing the monitoring system;
- The employer must consult the syndicate or employees' representatives prior to the implementation;
- The employer had previously used other less intrusive means to accomplish the pursued interest, which did not prove effective;
- The data must be stored for a period proportional to the purpose; such period cannot exceed 30 days, except when otherwise provided by explicit legal provisions or in justified cases.

***(iv) Processing in the context of a duty that serves a public interest***

Article 6 of the Implementation Law refers to the processing of personal data and special categories of personal data in the context of a duty that serves a public interest (article 6, par. 1), let. e) and article 9, letter g) of the GDPR). In such aforementioned cases, the operator has the following obligations:

- To implement adequate technical and organizational measures for the compliance with the principles provided in article 5 of GDPR;
- To appoint a Data Protection Officer (DPO), if this aspect is mandatory in accordance with article 10 of GDPR;
- To establish a storage period depending on the nature of the data processed and the purpose of processing, as well as specific terms when data must be deleted or revised in view of deletion.

Should you require any further information, please feel free to contact us:

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