CERHA HEMPEL CEE NEWSLETTER *Romania*

GDPR Update

In September, the Romanian Data Protection Authority (DPA) published its latest annual activity report, highlighting its key actions from 2019. Throughout the year, the DPA received 1156 requests from controllers and processors in the public and private sector, from other entities, as well as from natural persons, all requesting the DPA to give its opinion on various aspects regarding the interpretation and application of the GDPR (Regulation (EU) 2016/679) in Romania. We summarise some of the more significant matters brought to the attention of the DPA below:

Processing of employees' personal data using GPS tracking systems

As the use of geolocation devices involves a certain risk to the rights and freedoms of employees, employers are required to assess the related risks before installing such surveillance systems in order to establish whether their use is necessary, as well as to demonstrate the legitimate interest of the employer in its capacity as the data controller. Consequently, according to the DPA, it is necessary to conduct a data protection impact assessment (DPIA) of the controller's specific situation whenever the implementation of GPS tracking systems would result in the personal data of employees being processed.

Data processing in the context of commercial communications by electronic means

Commercial communications may only be sent by email with the express prior consent of the subscriber or user. Furthermore, the DPA stresses that the email address of a customer collected in the context of the sale of a product or service may be used for the purpose of commercial communications regarding similar products or services marketed by the controller. Additionally, customers must be given the opportunity to object to such use easily and free of charge, both when collecting the email address and each time a message is sent, in those cases where the customer has not initially refused such use.

The obligation to conduct a data protection impact assessment (DPIA)

The DPA highlights the Article 29 Data Protection Working Party guidelines which establish that in cases where it is not clear whether a DPIA is required, it is recommended that a DPIA is carried out nonetheless as a DPIA is a useful tool to help data controllers comply with data protection law. Therefore, the DPA states that it is incumbent upon the controller to consider the extent to which such processing is likely to result in a high risk to the rights and freedoms of data subjects, as well as to justify and document the reasons for not conducting such an assessment.

Biometric data – facial recognition techniques

Under the GDPR, data from the use of facial recognition techniques are considered biometric data. Such personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person are classed as a special category of personal data whenever processed for the purpose of uniquely identifying a natural person.

The DPA indicates that the processing of personal data on the basis of facial recognition techniques for the purpose of providing employees and visitors access to the premises of an institution is not necessary and proportional under the GDPR.

Therefore, the DPA recommends that in the absence of a legislative act, which provides adequate guarantees for data protection and the rights of data subjects and given the sensitive nature of the personal data concerned, the purpose of the processing must be fulfilled by other means which are less intrusive.

Implementation of data retention periods in the context of staff recruitment procedures

The DPA observes that the controller is given the opportunity to implement different data retention periods depending on the purpose(s) of the processing and the time required to achieve the purpose(s) by establishing on its own initiative a maximum retention period in compliance with the principles of data processing.

Nevertheless, with respect to the storage of personal data of unsuccessful applicants in the context of staff recruitment procedures, the DPA considers that such processing does not fall under the provisions of archiving purposes in the public interest and thus the storage period is to be limited, insofar as there are no specific legal provisions, to a period not exceeding the period necessary to attain the processing purposes, or until the end of the recruitment process.

Data retention for a period exceeding the end of the recruitment process may be carried out on the basis of the legitimate interest of the controller (Article 6(1)(f) GDPR) by informing applicants in advance and by making it possible for them to exercise their rights.

For more information

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