

# Consequences of Non-Compliance with the Provisions of the General Data Protection Regulations (GDPR)

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**ABSTRACT:** In order to receive and validly register complaints, it is mandatory to provide the identification data of the complained operator or of the authorized person complained, such as name and surname, address/headquarters, or at least of the available information held by the petitioner, in order to identify them. Complaints sent are signed in handwriting or electronically, and in the case of petitions sent electronically that cannot be signed, ANSPDCP may request confirmation of the correctness of the data transmitted electronically.

**KEYWORDS:** the protection of individuals, personal data, prejudice, administrative or judicial remedies, supervisory authority

## Introduction

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC provides in VIII - Remedies, liability and sanctions applicable to infringements of the provisions of the Regulation In accordance with the provisions of Article 77 - the right of every data subject to submit a complaint to a supervisory authority is guaranteed. (Fuerea 2019, 166)

Thus, without prejudice to any other administrative or judicial remedies, any person concerned shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State in which he has his habitual residence, where his place of residence is situated. work or where the alleged infringement has taken place, if it considers that the processing of personal data concerning it infringes this Regulation. (Fuerea 2019, 171)

The supervisory authority to which the complaint was lodged has an obligation to inform the complainant of the progress and outcome of the complaint, including the possibility of bringing a judicial appeal under Article 78 of the Regulation.

## Content

The procedure for receiving and resolving complaints is regulated by the provisions of Decision no. 133/2018 of the Chairman of the Supervisory Authority.

According to Decision no. 133/2018 and in accordance with Law no. 102/2005 on the establishment, organization and functioning of the National Authority for the Supervision of Personal Data Processing, with subsequent amendments and completions, for the receipt and valid registration of complaints it is mandatory to provide the following data of the petitioner: name, surname, home address or of residence.

If the complaint is submitted electronically, it is mandatory to provide the petitioner's e-mail address. (Popescu 2017, 137)

In the case of complaints submitted by the representative, in addition to the data of the petitioner mentioned in para. (1), it is mandatory to provide the following data of the representative: name and surname/name, postal address/office, e-mail address, telephone number, registration number in the register of associations and foundations, if applicable.

The national supervisory authority shall inform the data subject of the admissibility of the complaint within a maximum of 45 days of registration. If the information in the complaint or the documents submitted is found to be incomplete or insufficient, the National Supervisory Authority shall request the data subject to complete the complaint in order to be considered admissible for the purpose of an investigation.

A new period of no more than 45 days shall elapse from the date of completion of the complaint. The national supervisory authority shall inform the data subject of the progress or outcome of the investigation within 3 months from the date on which it was informed that the complaint was admissible.

Another right provided for in the Regulation in Article 78 is the right to an effective judicial remedy against a supervisory authority. Thus, every natural or legal person has the right to bring an effective judicial remedy against a legally binding decision of a supervisory authority concerning him or her, without prejudice to any other administrative or non-judicial remedies.

Without prejudice to any other administrative or non-judicial remedies, each data subject shall have the right to pursue an effective judicial remedy if the supervisory authority which is competent under Articles 55 and 56 does not deal with a complaint or inform it. The person concerned within three months of the progress or resolution of the complaint lodged under Article 77. Actions brought against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established, and where actions are brought against a decision of a supervisory authority which was preceded by an opinion or a decision of the supervisory authority. The supervisory authority shall forward that opinion or decision to the Court in the framework of the coherence mechanism.

Art. 78 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC.

Article 79 regulates the right to an effective judicial remedy against an operator or a person empowered by the operator.

Without prejudice to any available administrative or non-judicial remedies, including the right to lodge a complaint with a supervisory authority under Article 77, each data subject shall have the right to pursue an effective judicial remedy if he or she considers that his rights under this Regulation have been infringed as a result of the processing of his personal data in breach of this Regulation. (Sandru 2020, 122)

Actions brought against an operator or a person authorized by the operator shall also be brought before the courts of the Member State where the operator or the person authorized by the operator has its registered office. Alternatively, such an action may be brought before the courts of the Member State in which the data subject has his habitual residence, unless the controller or the person authorized by the controller is a public authority of a Member State acting in the exercise of its public powers.

The right of representation of data subjects is provided for in Article 80 of the Regulation. In accordance with the provisions of this article, the data subject has the right to mandate a non-profit body, organization or association, which has been duly constituted in accordance with national law, whose statutory objectives are in the public interest, which are active in the field of protection of the rights and freedoms of data subjects with regard to the protection of their personal data, to lodge a complaint on his behalf, to exercise on his behalf the rights referred to in Articles 77, 78 and 79, and to exercise the right to compensation referred to in Article 82 on behalf of the data subject, if this is provided for in national law.

Member States may provide that anybody, organization or association referred to in paragraph 1 of this Article, regardless of the mandate of a data subject, has the right to lodge a complaint in that Member State with the supervisory authority competent under Article 77 and to exercise the rights referred to in Articles 78 and 79, where he considers that the rights of a data subject under this Regulation have been infringed as a result of the processing.

Article 81 - Suspension of proceedings 1. Where a competent court of a Member State has information that an action of the same object is pending before a court of another Member State in respect of the processing activities of the same controller, or of the same person empowered by the controller, that court shall contact the court of the other Member State to confirm the existence of such actions.

Art. 79 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC.

Art. 81 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC 2. Where an action before a court of another Member State has the same object in respect of the processing activities of the same controller or of the same person empowered by the controller, any court having jurisdiction other than the court first seized may stay the proceedings. the action in her role.

Where such an action is brought at first instance, any court subsequently referred to it may also, at the request of one of the parties, decline jurisdiction, provided that such action falls within the jurisdiction of the court first seized and that the law applicable to it allows the shares to be linked.

Article 82 - Right to compensation and liability 1. Any person who has suffered material or non-material damage as a result of a breach of this Regulation shall be entitled to compensation from the operator or the person authorized by the operator for the damage suffered. (Simionovici, Cireașă, Lungu and Dan 2019, 201)

Any operator involved in processing operations shall be liable for damage caused by his processing operations in breach of this Regulation. The controller shall be liable for the damage caused by the processor only if he has not complied with the obligations of this Regulation which are specifically incumbent on the controller or has acted outside or contrary to the legal instructions of the controller. The operator or the person authorized by the operator shall be released from liability pursuant to paragraph 2 if he proves that he is not liable in any way for the event which caused the damage.

Where several processors or several persons authorized by the controller, or one controller and one controller, are involved in the same processing operation and shall be liable pursuant to paragraphs 2 and 3, for any damage caused by the processing, each controller or person authorized by the controller is liable (s) for the entire damage to ensure the effective compensation of the data subject.

Where an operator or a person authorized by the operator has paid, in accordance with paragraph 4, full compensation for the damage caused, that operator or person authorized by the operator shall be entitled to claim from the other operators, or the other persons empowered by the controller involved in the same processing operation to recover that part of the compensation corresponding to their share of liability for damage, in accordance with the conditions set out in paragraph 2.

Actions for the exercise of the right to recover compensation paid shall be brought before the competent courts in accordance with the law of the Member State referred to in Article 79 (2).

Article 83 - General conditions for the imposition of administrative fines<sup>90</sup> 89 Art. 82 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC 90 Art. 83 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data 1. (Ploesteanu 2019, 88).

Each supervisory authority shall ensure that the imposition of administrative fines in accordance with this Article for infringements of this Regulation referred to in paragraphs 4, 5 and 6 it is, in each case, effective, proportionate and dissuasive. 2. Depending on the circumstances of

each case, administrative fines shall be imposed in addition to or in place of the measures referred to in points (a) to (h) and (j) of Article 58 (2).

When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case, due regard shall be paid to the following:

- (a) the nature, gravity and duration of the infringement, taking into account the nature, scope or purpose of the processing in question, as well as the number of data subjects affected and the level of damage suffered by them;
- (b) if the infringement was committed intentionally or negligently;
- (c) any action taken by the controller or the person authorized by the controller to reduce the damage suffered by the data subject;
- (d) the degree of responsibility of the operator or the person empowered by the operator, taking into account the technical and organizational measures implemented by them pursuant to Articles 25 and 32;
- (e) any previous relevant infringements committed by the controller or the person authorized by the controller;
- (f) the degree of cooperation with the supervisory authority to remedy the breach and mitigate the possible adverse effects of the breach;
- (g) the categories of personal data affected by the breach;
- (h) the manner in which the infringement has been brought to the attention of the supervisory authority, in particular whether and to what extent the operator or the person authorized by the operator has notified the infringement;
- (i) where the measures referred to in Article 58 (2) have previously been ordered against the operator or the person authorized by the operator concerned in respect of the same object, compliance with those measures;
- (j) adherence to approved codes of conduct in accordance with Article 40, or to approved certification mechanisms in accordance with Article 42; and
- (k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits gained or the losses directly or indirectly avoided as a result of the infringement. (Ploesteanu 2019, 97)

## Conclusions

Where an operator or a person authorized by the controller intentionally or negligently infringes, for the same processing operation or for related processing operations, several provisions of this Regulation, the total amount of the administrative fine may not exceed the amount provided for the most serious infringement. For infringements of the following provisions, in accordance with paragraph 2, administrative fines of up to EUR 10 000 000 or, in the case of an undertaking, of up to 2% of total annual global turnover for the preceding financial year shall apply, taking into account the highest value:

- (a) the obligations of the operator and the person empowered by the operator in accordance with Articles 8, 11, 25 to 39, 42 and 43;
- (b) the obligations of the certification body in accordance with Articles 42 and 43;
- (c) the obligations of the monitoring body in accordance with Article 41 (4). 5)

For infringements of the following provisions, in accordance with paragraph 2, administrative fines of up to EUR 20 000 000 or, in the case of an undertaking, of up to 4% of the total annual global turnover corresponding to the preceding financial year shall be imposed, taking into account the highest value is taken into account:

- (a) the basic principles for processing, including the conditions of consent, in accordance with Articles 5, 6, 7 and 9;
- (b) the rights of data subjects in accordance with Articles 12 to 22;
- (c) transfers of personal data to a recipient in a third country or an international organization in accordance with Articles 44 to 49;

(d) any obligations under national law adopted pursuant to Chapter IX; (e) failure to comply with an order or a temporary or permanent restriction on the processing, or suspension of data flows, issued by the supervisory authority pursuant to Article 58 (2), or failure to grant access in breach of Article 58 (1).

For the purpose of infringing an order issued by the supervisory authority in accordance with Article 58 (2), administrative fines of up to EUR 20 000 000 or, in the case of an undertaking, up to at 4% of the total annual global turnover for the previous financial year, taking into account the highest value.

Without prejudice to the corrective powers of the supervisory authorities referred to in Article 58 (2), each Member State may lay down rules determining whether and to what extent administrative fines may be imposed on public authorities and public bodies established in that Member State.

The exercise by the supervisory authority of its powers under this Article shall take place subject to the existence of appropriate procedural safeguards in accordance with Union and national law, including effective judicial remedies and the right to a fair trial.

Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a way that the fine is initiated by the competent supervisory authority and imposed by the competent national courts, while ensuring that such remedies are attack are effective and have an effect equivalent to that of administrative fines imposed by the supervisory authorities. In any case, the fines imposed must be effective, proportionate and dissuasive.

Those Member States shall inform the Commission of the provisions of national law which they adopt pursuant to this paragraph by 25 May 2018, as well as, without delay, of any amending legislative act or any subsequent amendment thereto. 91 Art. 58 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC Article 87 - Penalties 1.

Member States shall lay down the rules on penalties applicable to infringements of this Regulation, in particular infringements that are not subject to administrative fines under Article 83. They shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate and dissuasive. Each Member State shall inform the Commission of the provisions of national law which it adopts pursuant to paragraph 1 by 25 May 2018 and, without delay, of any subsequent amendment thereto.

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