

The EU General Data Protection Regulation Implications for Romanian Small and Medium-Sized Enterprises

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Abstract

Starting on 25 May 2018, all Member States, including Romania, must apply the new General Data Protection Regulation 2016/679. It contains obligations regarding the collection, processing, storing, disclosing of data to individuals (clients, employees, etc.), with very large sanctions. Although, as a rule, record-keeping obligations do not apply to small and medium sized enterprises, organizations with less than 250 employees have record-keeping obligations unless the processing is likely to generate certain risks for the rights and freedoms of the data subjects, if it's not occasional or includes special data, and many SMEs enterprises fall into such situations.

In this light, the present paper analyzes the impact of the new regulation and the stage of implementation of the necessary measures for compliance at the level of the Romanian small and medium sized enterprises.

Key words: personal data protection, GDPR, SMEs, implementation measures, public authorities
J.E.L. classification: L26, L86

1. Introduction

Some of the fundamental rights of European citizens must enjoy in this capacity are protection of personal data and respect for privacy.

The European Union must ensure the consistent application of the fundamental right to data protection enshrined in the Charter of Fundamental Rights of the European Union and its position on the protection of personal data should be strengthened in the context of all European policies, including law enforcement and crime prevention, as well as in international relations, especially in a global society characterized by rapid technological change.

In the light of the new European Union data protection rules, entered into force in May 2018, which strengthen citizens' rights and simplify the rules applicable to businesses in the digital age, the present paper analyzes the impact of these regulations and the stage of implementation of the necessary measures for compliance at the level of the Romanian small and medium sized enterprises based on the conclusions drawn from an opinion poll conducted by the National Council of Small and Medium Private Enterprises in Romania in the spring of 2018.

2. Theoretical background

The General Data Protection Regulation – GDPR (namely the Regulation (EU) 2016/679, repealing Directive 95/46/EC) sets out the rules on the protection of individuals with regard to the processing of personal data and the rules on the free movement of personal data, and will have direct applicability in all Member States, including Romania, starting May 25, 2018.

The Regulation defines *personal data* as "any information about a natural person that may lead, directly or indirectly, to the identification of that person. This includes: names, identification numbers, location data, and any other online identifier that is physically, psychologically, genetically, mentally, economically, culturally or socially specific to a particular individual." (GDPR art. 4) Unlike Directive 95/46 /EC, location information or online identifiers will be considered as personal data. EU Regulation 2016/679 also covers online identifiers offered by devices, applications or protocols, internet protocol protocol markers, and even cookies or radio frequency tags.

From the point of view of *its material scope*, the Regulation applies to "the processing of personal data, wholly or partly by automated means, as well as to the processing by non-automated means of personal data which are part of a filing system of the data or which are intended to be part of a data recording system".(GDPR art. 2)

From the point of view of *its territorial scope*, the Regulation applies to "the processing of personal data in the context of activities carried out at the premises of an operator or of a person empowered by an operator within the Union, whether or not the processing operation takes place within the Union". (GDPR art. 3)

According to the new regulation, the processing of personal data must respect certain principles (GDPR art. 4), failure to comply with these provisions being punished with several types of *sanctions / damages*, including very large fines of up to € 20 million or 4% of global turnover.

3. Practical implications for Romanian small and medium sized enterprises

Specialists appreciate that expenditures will vary according to the sector of activity and the complexity of the activities carried out, aiming to bring the site and internal systems in accordance with the Regulation, processing of employees' data, customer data for marketing purposes, sensitive customer data health data, criminal / judicial record, etc.), online sales, etc.

According to the "The Economic Costs of the European Union's Cookie Notification Policy" Study released in 2014, the cost involved in bringing the site and systems in line with the use of cookies (which the General Data Protection Regulation is replacing) was estimated at € 900/site, which could be a benchmark for the requirements of the General Data Protection Regulation.(Castro&McQuinn, 2014)

Although, as a rule, *the record keeping obligations do not apply to an enterprise or organization with less than 250 employees, unless the processing is likely to generate certain risks for the rights and freedoms of the data subjects, if it's not occasional or includes special data, many SMEs enterprises fall into these situations.*

Regarding Romanian SMEs, National Council of Small and Medium Private Enterprises from Romania conducted a survey in the form of a questionnaire on its official site (www.cnipmmr.ro) addressed to its members on the impact of the new rules on data protection and the implementation of the necessary measures for compliance at the enterprise / organization level. (National Council of Small and Medium Private Enterprises from Romania, 2018)

The 210 respondents were 51.4% micro-enterprises, 21.6% small enterprises, 18.9% medium-sized enterprises and 8.1% NGOs and other legal forms. Of these, only 5.3% have more than 250 employees.

Asked if they have information about the content of the new GDPR, 79.4% of the interviewed organizations responded positively, the sources cited in getting such information being: National / European sites (35%), media (30%), consultancy companies (15%), Romanian public authorities (12%), and other (8%).

42.1% of SMEs have not yet taken measures at their company/organization level to implement the new GDPR compared to 28.9% of those who have already done so and 28, 9% who said they were going to take the necessary steps in this direction.

Thus, the steps they have been able to achieve so far at the company/organization level for the implementation of the GDPR were:

- ✓ audit of data and processes to assess the extent to which the GDPR applies to the organization / society (identification of personal data and the place where they are located) - 39%;
- ✓ management - controlling the use of personal data (adopting transparent policies that clearly show how, when and how it collects and processes your organization's personal data) - 22%;
- ✓ protection - establishing security measures to protect personal data (creating a risk management plan and use a secure infrastructure and advanced security features) - 22%;
- ✓ ensuring new requirements and standards for transparency, accountability and record keeping (using appropriate tools) - 17%.

86% of SMEs said they encountered difficulties in implementing the GDPR, with the most important difficulties being represented by:

- lack of practical guides / standard procedures – 16%;
- increased bureaucratic effort (new procedures, increased effort to obtain consent to the collection and processing of personal data, etc.) – 16%;
- regulation's complexity (many pages, difficult terminology, etc.) – 14%;
- insufficient information and lack of organized information campaigns – 14%;
- increased consulting costs – 5%;
- other (insufficient time for implementation, increased personnel costs (new salaries / salary increases), increased investment costs (new equipment / software), insufficient and difficult to find consultants, fiscal facilities) – 34%.

97.4% of SMEs appreciate that the competent public authorities did not provide adequate measures for the preparation of GDPR implementation in Romania. Thus, among the measures that respondents consider necessary for understanding and facilitating the implementation of GDPR, are included: developing support guides – 43%; implementing a digitization program and supporting the costs involved from EU funds – 31%; training with European funding – 23%; other – 3%.

About the fines of 20 million euros or 4% of the global turnover, 97,4% of SMEs consider them as excessively high or disproportionate.

4. Conclusions

SMEs form the backbone of the EU28 economy, as they represent 99% of all businesses in the European Union. Particularly, in Romania, according to the European Commission, 99.66% of all enterprises are SME, supporting over 67% of Romanian employees, and creating almost 50% of the value added in the Romanian economy. (European Commission, 2017)

In these conditions, given the complexity of the field and the high cost of GDPR implementation for SMEs, the competent Romanian authorities, and especially the Ministry for the Business, Commerce and Entrepreneurship Environment, should speed up the adoption of special measures such as:

- ✓ implementing a digitization program and supporting the costs involved from EU funds;
- ✓ providing a free counseling service for SMEs to implement the General Data Protection Regulation;
- ✓ developing a concrete and complete application guide for SMEs, with steps to follow, operational procedures, institutions, deadlines, forms, etc. available on-line;
- ✓ achieving a broad information campaign adapted to the specifics of SMEs;
- ✓ providing free training courses.

5. References

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