

## PERSONAL DATA MANAGEMENT IN THE PROJECTS IMPLEMENTED IN ROMANIA AND FINANCED FROM EUROPEAN FUNDS

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**Abstract:** *Background: the enactment of General Data Protection Regulation (EU) 2016/679 (GDPR) has an impact on projects co-financed by European funds because they use personal data of members of the target group, of representatives of economic operators submitting tenders in procurement procedures. but also of the staff involved in the implementation of the project. Our concern is that although the beneficiaries of European funds are obliged to comply with these rules, the Management Authorities in Romania are not a good example in this regard. Our objective is to highlight the GDPR principles that are not applied by the Romanian Management Authorities and that affect the protection of personal data. Method: analysis of the requirements imposed by the GDPR. The result: although the GDPR clarifies the use and management of personal data, these rules are not followed uniformly by all institutions involved in the process of using and managing European funds. The conclusion is that the observance of the GDPR principles and by the institutions that manage the European funds in Romania, will make an important contribution to the protection of personal data.*

**Keywords:** *European Funds; Privacy; General Data Protection Regulation (GDPR); European Union law; Personal data; Special categories of personal data.*

**JEL Classification:** *K33.*

### 1. Introduction

Almost two years after the entry into force of General Data Protection Regulation (EU) 2016/679 (GDPR), there are still many operators of personal data for which the applicability of this normative act has unclear elements and, as a result, they do not apply all the provisions properly. In order to better understand the usefulness of observing the GDPR principles, it is necessary to synthesize relevant information regarding the protection of personal data. Thus, the processing of personal data is closely linked to the protection of individuals, and therefore aims at a fundamental right. According to Article 8 paragraph 1 of the Charter of Fundamental Rights of the European Union and Article 16 paragraph 1 of the Treaty on the Functioning of the European Union, any person has the right to the protection of personal data concerning him [1,5]. Directive 95/46 / EC was transposed internally in Romania by Law no. 677/2001 for the protection of persons regarding the processing of personal data and the free movement of these data. Although Directive 95/46 / EC introduced robust mechanisms for the protection of personal data [2], it was outdated.

Technology development, the emergence of Google, Facebook, LinkedIn allow data processing in ways that could not be foreseen in 1995 when Directive 95/46 / EC was adopted. Therefore, General Data Protection Regulation (EU) 2016/679 is a natural consequence of these results of technological progress. In contrast to the Directive, Regulation (EU) 679/2016 (the "Regulation" or "GDPR") applies directly in all Member States from 25 May 2018.

The Regulation defines personal data as "any information about an identified or identifiable natural person (" the data subject "); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by reference to an identification element, such as a name, identification number, location data, an online identifier, or to one or more many specific elements, specific to its physical, physiological, genetic, psychological, economic, cultural or social identity " [4]. According to Opinion 4/2007 of the Working Group Art. 29, adopted on June 20, 2017, personal information will take into account the following pillars: any information / which refers to / an identified / or identifiable natural person [3].

In the management of the European funded projects, the collection and exchange of personal data increased significantly in 2014-2020 framework compared to previous multiannual financial frameworks. Applications such as *mymis.ro*, *fonduri-ue.ro*, *afir.info.ro* or *e-licitatie.ro* used by the beneficiaries of European funds, public or private, either in relation to the Management Authorities for project implementation, or in relation to economic operators in the procurement procedures, use personal data at an unprecedented level. Therefore, all projects must comply with the seven principles of the processing of personal data: legality, fairness and transparency; purpose limitations; minimizing data; accuracy; storage limitations; integrity and confidentiality; responsibility.

## **2. Processing of personal data at the Romanian Management Authorities level**

According to General Data Protection Regulation (EU) 2016/679 (GDPR), the operator is the entity that establishes the purpose and the means of data processing and its obligations are to inform the data subject, to ensure that the processing is legal and that the rights of the person are respected. Starting from the recommendation that each institution decide its quality: operator, authorized person or both, between the operator and the authorized person, there should be a contract to ensure data protection. As a result of this recommendation, in the financing contracts between the Management Authorities and beneficiaries, mentions are found regarding the processing, storage and archiving of the data obtained during the execution of the financing contract. In the contracts related to the Regional Operational Program, the processing, storage and archiving of data is performed with the purpose of verifying the implementation mode and / or complying with the contractual clauses and the national and European legislation. In the contracts related to the Human Capital Operational Program, the personal data are used for the purpose of achieving the project objectives, for statistical purposes and those of the target group can only be processed and published, for the information of the public, only with their prior information on the purpose of processing and publication. and obtaining their consent. However, although the recommendation to have

contractual provisions regarding personal data is respected, there are regulations that are not respected.

First of all, the provisions regarding the personal data contained in the financing contracts are not complete because either the duration of the processing is not clearly specified, formulations such as "throughout the term and after termination" of the financing contract do not represent a clear information on the duration, either the type of personal data is not provided, or it does not establish the categories of data subjects (except for the Human Capital Operational Program), or it does not establish the obligations of the operator but only the rights. Also, the contract omits the provisions by which the authorized person processes personal data only on the basis of the operator's instructions and ensures that the persons authorized to process the personal data have committed to respecting the confidentiality.

A second important aspect omitted by the Management Authorities is that the information and obtaining the consent must be carried out, according to art. 13, section 2, chapter III of Regulation no. 679/2016, when collecting personal data and not later.

Analysing the official websites of the Management Authorities from the point of view of information, knowing that it must address the answers to the questions: Who processes it; What types of data do they process?; To whom are they transmitted? For what purposes? During what period are they stored?, and they must have a concise, transparent, intelligible and easily accessible form, we have identified the following:

- [mysmis.ro](http://mysmis.ro) application does not inform about the types of data they process and what is the period for which they are stored.
- The official website of the Management Authority of the Regional Operational Program has an information in English, a vague enumeration of the personal data they process, an announcement that the data can be transferred but without specifying to whom and without specifying storage duration.
- The website [fonduri-ue.ro](http://fonduri-ue.ro) does not contain any information regarding the protection of personal data.
- The website [e-licitatie.ro](http://e-licitatie.ro) does not contain any information regarding the protection of personal data.
- The website [afir.info.ro](http://afir.info.ro) contains all the information elements in accordance with the GDPR.

### **3. Processing of personal data at the beneficiary's level.**

Analysing the forms made available by the Management Authorities, we found that in order to prepare the signing of the financing contract, a consent form regarding the processing of personal data is sent to the beneficiary. In the situation of the Regional Operational Program, the consent is given only by the legal representative although in the application for financing, personal data are also requested for the contact person, the project manager and the other members of the project team, if at the time of submission of the request for funding they are known. In the situation

of the National Rural Development Program, the legal representative of the beneficiary must sign a "Declaration regarding the processing of personal data", which is in fact an information, as it results from the document, because it is mentioned that "it informs the data subjects whose data are collected on how these data are used and on the rights that are due to them." In the second example, it is no longer an incomplete consent but a complete lack of consent.

#### **4. Personal data processing at the target group level.**

The processing of personal data at the target group level is made unequivocally within the Human Capital Operational Program. For this purpose, the Management Authority has made available to the beneficiaries the form Annex 8 Target group registration form containing the following note: "Note: By completing and signing this form you express your consent regarding the use and processing of personal data. Your personal data, recorded / collected in the course of the POCU projects, are not processed for any purpose other than those mentioned in the Individual Registration Form and are not communicated to any third party, except only the public institutions / authorities, according to the legal provisions in force."

What is noticeable in the first place is the fact that this consent is not freely expressed because the element of pressure placed on the data subject for expressing his will cannot be omitted, in fact the person has no real choice. Also, this consent does not contain a manifestation of unambiguous will, respectively an unequivocal action, a statement of the data subject.

Last but not least, we emphasize the lack of a clear purpose for which the consent was obtained. The specification "are not processed for any purpose other than those mentioned in the Individual Registration Form" has no support in fact, because the form does not find the purposes of processing personal data.

#### **5. Conclusion**

Protecting personal data only at the project beneficiaries level is not enough because the management authorities are the ones who centralize all this information, the volume of personal data being very large. There is a need for a unitary and much more rigorous approach to respecting all the principles of personal data processing. Thus, it is necessary to be complete the financing contracts with the information regarding the duration of the processing, the type of personal data, the categories of data persons (except for the Human Capital Operational Program), the obligations of the operator, the instructions of the operator for the processing of personal data and the commitment to persons authorized to process personal data in order to respect confidentiality. The Management Authorities must update the information on the official websites and obtain a freely expressed and unequivocal free consent from all individuals whose personal data is processed, stored and archived.

All these recommendations are important because after May 25, 2018 institutions that do not comply with the requirements of the Regulation will be subject to administrative sanctions or fines.

Given the fact that a huge amount of personal data is processed in the implementation of European-funded projects, it is necessary that all the institutions involved in this process do not lose sight of the rights of the natural person concerned: transparency, information, access, rectification, deletion, restriction, portability, opposition.

### References

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