

PERSONAL DATA PROTECTION
- HOW TO PREPARE FOR THE IMPLEMENTATION
OF THE NEW REGULATIONS AS OF MAY 25, 2018

GDPR



ON MAY 25, 2018, THE PROVISIONS REGULATING PERSONAL DATA PROTECTION WILL UNDERGO A SUBSTANTIAL CHANGE

What is personal data? This term means any information relating to an identified or identifiable natural person. No closed catalogue of personal data exists – anything about a natural person, such as color of its eyes, credit history or even name of its dog can be classified as personal data if such information can be linked with particular person.

On May 25, 2018, the provisions 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 (General Data Protection Regulation; hereinafter: GDPR) enter into force.

On the same day, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter: Directive) in force heretofore will no longer be binding. The new national Act on Personal Data Protection will only be of an executive nature in relation to the GDPR and used as an overlay for the new EU regulation.

First and foremost, the new provisions mean new obligations for entrepreneurs; therefore, to avoid penalties and payment of damages, it is worth adapting the procedures in force in your business to the new requirements beforehand.

WHO DOES THE GDPR IMPOSE NEW OBLIGATIONS ON WITHIN THE SCOPE OF PERSONAL DATA PROTECTION?

Obligations with respect to personal data protection apply to entities processing personal data, i.e. *de facto* all entrepreneurs (personal data is first and foremost processed in connection with the employment of natural persons, customer service, and the provision of services for individuals).

Obligations related to personal data protection pertain first and foremost to the processing of data in IT systems, as personal data collected in databases that is capable of being profiled is increasingly valuable, and simultaneously, the violation of rights and freedoms of natural persons is more likely in such cases. However, data processing within physical sets, e.g., in the case of drawing up a memo from a business meeting, may also be subject of protection under the GDPR.

The GDPR mostly uses the term **data controller**, which is an entity that independently establishes the goals and manner of processing. **The data controller is *de facto* the owner of the data**, which means that it decides how handle the data in its possession. In other words, it is an entity that processes data within the framework of its own activities and for its own needs.

Therefore, all entrepreneurs that process data within the framework of their business activities (e.g. in connection with employment of personnel or customer service) **are data controllers**.

WHAT DOES THE IMPLEMENTATION OF THE GDPR MEAN FOR ENTREPRENEURS?

Entrepreneurs will be required to implement a reliable procedure and keep appropriate documentation with respect to personal data processing that demonstrates that the entrepreneur's activities connected to personal data processing have been analyzed in terms of their compliance with the general data processing principles arising from the GDPR and that their activities comply therewith (accountability principle).

It will be necessary to carry out an analysis and assessment of the risk level of a violation in the handling of personal data and to make decisions on the type and scope of technical and organizational data protection measures to be put in place (principle of risk analysis and use of appropriate measures).

There will be a requirement to report infringements of data protection principles to the respective supervisory authority.

In this context, one should remember the accountability principle, which requires that entrepreneurs have a reliable procedure and keep appropriate documentation with respect to personal data processing that will make it possible to demonstrate that the entrepreneur's activities connected to personal data processing have been analyzed in terms of their compliance with the general data processing principles arising from the GDPR and, first and foremost, that their activities comply therewith.

The Inspector-General for Personal Data Protection will be equipped with a broad spectrum of corrective measures, from issuing warnings and cautions through limiting the possibility of data processing to severe monetary penalties.

Regardless of the aforementioned, one should keep in mind that any **person who has suffered material or non-material damage** as a result of an infringement of this regulation **will have the right to receive compensation from the controller or processor for the damage suffered.**
