

Order no. 75 of 4th of June 2002 laying down specific measures and procedures to ensure a satisfactory level of protection of the rights of individuals whose personal data are subject to processing

Based on the Decision of the Senate no. 33 of the 4th of October 2001 on the appointment of the Ombudsman,

Taking into account Article 13 of Law no. 35/1997 concerning the organisation and functioning of the Ombudsman institution, as amended and supplemented by Law no. 181/2002 and Article 4 of the Regulation of organization and functioning of the Ombudsman institution,

Pursuant to the provisions of Article 28 (2) of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, according to which the Ombudsman, as the supervisory authority, may order specific measures and procedures to ensure a satisfactory level of protection of the rights of individuals whose personal data are processed for the period when codes of conduct are not adopted by the professional associations,

Having in mind that, according to Article 28 (1) of Law no. 677/2001, it is necessary to assist the professional associations which have the obligation to elaborate and submit for approval to the supervisory authority codes of conduct that contain adequate rules in order to protect the rights of individuals whose personal data may be processed by the members of the associations,

In view of the Note concerning the specific measures and procedures to ensure a satisfactory level of protection of the rights of individuals whose personal data are subject to processing and of the adoption of a template for a code of conduct, registered under no. 5412 of 29th of May 2002 of the Ombudsman's Deputy,

The Ombudsman issues the following order

Article 1

The specific measures and procedures for ensuring a satisfactory level of protection of the rights of individuals whose personal data are subject to processing provided in Annex 1 of this order are adopted.

Article 2

The Template for the code of conduct provided in Annex 2 of this order is approved.

Article 3

This order will be published in the Official Journal of Romania, Part I.

Article 4

- Annexes no. 1 and 2 are part of this order.

OMBUDSMAN,
prof. univ. dr. IOAN MURARU

ANNEX No. 1: Specific MEASURES AND PROCEDURES to ensure a satisfactory level of protection of the rights of individuals whose personal data are subject to processing

Scope and domain of application

Article 1

(1) These measures and procedures are designed to ensure a satisfactory level of protection for personal data processed by the members of the professional associations by establishing the detailed rules for the exercise of the rights and obligations incumbent upon the members of the professional associations in the field of protection of individuals, in respect of personal data, within the professional associations in dealing with data subjects (as beneficiaries of the services provided, users etc.), with other professional associations, as well as other natural or legal persons who do not belong to professional associations.

(2) These measures and procedures are applicable, for the period when codes of conducts are not adopted by professional associations, to all the operations through which the members of the professional associations process personal data.

(3) These measures and procedures are without prejudice to any other legal or deontological obligations incumbent on professional associations.

(4) These measures and procedures are applicable to all the professional associations from Romania.

Defining the terms

Article 2

(1) The terms used for establishing these measures and procedures have the following meaning:

a) professional associations – organizational forms of private-law entities established based on professional criteria;

b) data subject – natural person whose personal data are processed;

c) to collect – to gather, to aggregate, to receive personal data through any means and any source;

d) to disclose – to transmit, to disseminate, to make available the personal data in any other way outside the data controller;

e) to use – to utilize the personal data by and inside the data controller;

f) consent – the agreement of the data subject for his/her personal data to be processed, which must always be expressed and unequivocal;

g) adequate level of protection and security for the processing of personal data –

the level of security proportional to the risk it involves the processing of personal data against the rights and freedoms of individuals and in accordance with the minimum

requirements of security of processing of personal data, elaborated by the supervisory authority and updated according to the technological developments and the implementation costs of such measures;

h) direct marketing – the promotion of the products and services addressed directly to clients, natural persons, through the means like mail, including the electronic mail or other means of distance marketing, other than the regular promotional methods (advertising).

(2) Terms like: personal data, processing of personal data, storage, data controller, third party, recipient, anonymous data, supervisory authority, right to information, right of access, right of intervention, right to object have the meaning defined by Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, by Law no. 676/2001 on the processing of personal data and the protection of privacy in the telecommunication sector, as well as Law no. 682 of 28th November 2001 on the ratification of the convention on the protection of individuals with regard to automatic processing of personal data, adopted in Strasbourg on the 28th January 1981.

Legality and transparency

Article 3

(1) The members of the professional associations, hereinafter members, recognize and observe the right to intimate, family and private life.

(2) The processing of personal data by the members is carried out in conformity with the legal provisions.

(3) The members have the obligation to ensure the transparency of the processing of personal data.

Accountability

Article 4

(1) The members are responsible for the personal data being under their control, as well as for the data transferred to third parties.

(2) Each member will designate the persons which will be held accountable for the observance of the legal provisions from the protection of individuals and the personal data protection field.

Legitimacy of the collection purpose

Article 5

(1) The collection of the personal data through fraudulent, disloyal and illegal means is forbidden.

(2) The members will communicate the purposes for which the personal data are collected before or at least at the moment of the collection.

(3) The mention of the purposes can be done in written, orally or in electronic form, in a easy accessible language for the data subjects.

Consent

Article 6

- (1) The consent of the data subject is required for the processing of personal data, except for the cases where the law states otherwise.
- (2) The members will use any means in good-faith, which requires reasonable financial costs, in order to inform the data subjects about the processing of personal data and to ask for their consent at the moment of collection of personal data.
- (3) The data subject can withdraw his/her consent in any moment, subject to prior information of the data controller. The latter one will inform the data subject with regard to the procedure and the effects of the consent withdrawal.

Legitimacy of the disclosure

Article 7

- (1) The members will process the personal data only for the purposes for which the data were collected, except for the case when the data subject gave his/her consent for the processing in other purposes or for other cases allowed by law.
- (2) The access to the processed data will be allowed only to the employees of the members, in order to fulfill their tasks.

Legitimacy of the storage

Article 8

- (1) The members have the obligation to keep the personal data accurate, complete and up to date in order to achieve the purposes for which are used.
- (2) The inaccurate or incomplete data will be deleted or rectified.
- (3) The personal data will be kept only for the period necessary for the achievement of the purposes established.
- (4) The members will adopt special rules for the establishment of the minimum and maximum period of time for the retention of the data collected, by observing the rights of the data subject, especially the right of access, of intervention and to object.
- (5) Following the periodical check, the personal data held by the data controller which no longer serve the purpose or the fulfilment of certain legal obligations will be destroyed or transformed in anonymous data in a reasonable period of time, according to the procedures established by law or by the members, when such legal provisions are not in place.

Security of the processing

Article 9

The members have the obligation to adopt the necessary technical and organisational measures in order to ensure an adequate level of protection and security within the operations carried out upon the personal data for the following purposes: to limit the access to the databases, which is allowed only to authorised persons; to prohibit the copy of the data outside the places where they are administrated; in general, in order to prevent any uncontrolled circulation of the data.

Right to information

Article 10

- (1) The strategies and the procedures used by the members in connection with the processing of personal data will be made available for the data subject, as information provided in an accessible language, through physical, telephone or electronic means (for example brochures).
- (2) The members will communicate the information, following a request, concerning the personal data processed, the sources from where the personal data were collected, the purposes of the processing and if and to which third party the data were disclosed when the law does not prohibit.
- (3) When the disclosure of the data is imposed by law (for example for a court decision), the members will ensure that the third party asking for the disclosure is action according to the legal provisions and the request concerns only the no excessive personal data by reference to the purpose of the processing. The data subject will be informed about the disclosure only if the law allows it.
- (4) Bringing to the knowledge of the data subjects of the rights which are granted (especially the right provided by Article 12-15 of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data) can be accomplished through some mentions inserted on the products' or services' offers, on the first document addressed to the data subject (for example: invoice, delivery table, acknowledgement of receipt etc.), on the prospectuses that contain also questionnaires etc.

Right of access

Article 11

- (1) The members shall allow the access to the data subjects to personal data concerning them, by using the easiest methods which can be available in a reasonable way.
- (2) The access of the data subject cannot be allowed, except for the cases provided by law, in the following situations: when the safety or the life of another person can be affected; when data concerning confidential commercial information can be requested; when it would prejudice the resolution of a dispute or a criminal trial.
- (3) The members have the obligation to motivate the refusal of allowing access to certain personal data.

Right of intervention

Article 12

- (1) The data subjects have the right to ask for the verification of the accuracy and the complete character of the personal data concerning them, as well as to ask for the rectification of the inaccurate or incomplete data, by formulating certain appeals.
- (2) The members shall keep an evidence of the appeals referring to the accurate or complete character of the data which have not been solved and, when the data will be transferred to other data controllers, the data which have been rectified or for which there are unsolved appeals shall be underlined.
- (3) The provisions of paragraph (2) are applicable also for the disclosure to third parties, as the case may be.
- (4) The updating of the databases is carried out through the information transmitted by the data subjects, as well as through the information provided by any external source authorised by law.

Right to object

Article 13

(1) The exercise by the data subject of the right to object to the processing of personal data in direct marketing operations is ensured through the submission of requests or through the inclusion in the lists of individuals who object. The data subject will be informed about these lists to object, as well as about the way to ask for their insertion.

(2) The data subjects can exercise the right to object at any moment, preferably in a reasonable time provided by the data controller, without prejudice to the possibility for the right to be exercised outside this deadline.

(3) Those lists are administrated by the professional associations.

(4) For the onward processing, as well as for the transfer to other data controllers, the members will ensure that is not about the data for which the data subjects have previously exercised their right for the deletion of data or their right to object to their transfer.

Legitimacy of transfer

Article 14

(1) For the situation of the personal data transfer to other data controllers, especially for direct marketing operations, the data subjects will be informed about the transfer by inserting some mentions on the products' or services' offers.

(2) The mentions provided by paragraph (1) will contain also the specification of the right to object to the data transfer, as well as of the method through which the data subjects can exercise this right.

(3) The safeguards for ensuring the protection of personal data within the data transfer to other data controllers will be provided by the contractual clauses concerning the usage of these data, as the case may be. These clauses will mention, among others, the rights granted to data subjects, as well as the fact that these rights can be exercised only by observing the confidentiality of certain commercial clauses.

Solving complaints

Article 15

(1) The members have the obligation to solve the complaints and any other requests related to the processing of personal data, within period of time and conditions provided by law.

(2) The procedure of receiving, investigating and solving of complaints and other requests from the data subjects will be established by the members and will be brought to the attention of the data subjects.

Cooperation with the supervisory authority

Article 16

(1) On an annual basis or whenever is required, the members shall submit to the supervisory authority of personal data processing reports or synthesis on the complaints received and the manner of their settlement.

(2) The reports and synthesis mentioned in paragraph (1) could contain also other information concerning the activity of the members in the personal data protection field, as well as improvement proposals of their activity.

Expenses incurred by the data subjects

Article 17

The members will implement measures in order to ensure a reasonable level of the expenses related to exercising the rights provided by law and the codes of conduct, expenses which shall be borne by the data subject, except for the case when these rights can be exercised free of charge.

ANNEX NO. 2: TEMPLATE FOR A CODE OF CONDUCT

Preamble

Taking into consideration the importance of granting the right to intimate, family and private life, as provided by Article 26 of the Romanian Constitution, bearing in mind the necessity for protecting this fundamental right within the personal data processing activities, regulated by Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, by Law no. 676/2001 on the processing of personal data and the protection of privacy in the telecommunication sector, as well as by Law no. 682/2001 on the ratification of the Convention on the protection of individuals with regard to automatic processing of personal data, adopted in Strasbourg on the 28th January 1981,

Having in mind the provisions of Article 28 (1) of Law no. 677/2001, according to which the professional associations have the obligation to elaborate and submit for approval to the supervisory authority codes of conduct that contain adequate rules in order to protect the rights of individuals whose personal data may be processed by the members of the associations,

Whereas the professional associations, through the activity carried out by its members, process personal data for whose protection is necessary to adopt certain codes of conducts,

We propose to the professional associations the following template for a code of conduct:

CHAPTER I: General provisions

Scope and domain of application

Article 1

(1) This code of conduct has the objective the establishment of certain rules in order to ensure a satisfactory level of protection for personal data processed by the members of the professional associations.

(2) These norms of conduct establish the exercise of the rights and obligations incumbent upon the members of the professional associations in the field of protection of individuals, in respect of personal data, within the professional associations in dealing with data subjects (as beneficiaries of the services provided, users etc.), with other professional associations, as well as other natural or legal persons who do not belong to professional associations.

- (3) This template for a code of conduct is applicable regardless the operation through which the members of the professional associations process personal data.
- (4) The rules contained in this template for a code of conduct are without prejudice to any other legal or deontological obligations incumbent on professional associations.
- (5) This template for a code of conduct contains rules of conduct applicable to all the professional associations from Romania.

Defining the terms

Article 2

(1) The terms used for establishing these measures and procedures have the following meaning:

- a) professional associations – organizational forms of private-law entities established based on professional criteria;
- b) data subject – natural person whose personal data are processed;
- c) to collect – to gather, to aggregate, to receive personal data through any means and any source;
- d) to disclose – to transmit, to disseminate, to make available the personal data in any other way outside the data controller;
- e) to use – to utilize the personal data by and inside the data controller;
- f) consent – the agreement of the data subject for his/her personal data to be processed, which must always be expressed and unequivocal;
- g) adequate level of protection and security for the processing of personal data – the level of security proportional to the risk it involves the processing of personal data against the rights and freedoms of individuals and in accordance with the minimum requirements of security of processing of personal data, elaborated by the supervisory authority and updated according to the technological developments and the implementation costs of such measures;
- h) direct marketing – the promotion of the products and services addressed directly to clients, natural persons, through the means like mail, including the electronic mail or other means of distance marketing, other than the regular promotional methods (advertising).

(2) Terms like: personal data, processing of personal data, storage, data controller, third party, recipient, anonymous data, supervisory authority, right to information, right of access, right of intervention, right to object have the meaning defined by Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, by Law no. 676/2001 on the processing of personal data and the protection of privacy in the telecommunication sector, as well as Law no. 682 of 28th November 2001 on the ratification of the convention on the protection of individuals with regard to automatic processing of personal data, adopted in Strasbourg on the 28th January 1981.

Adoption of the code of conducts

Article 3

(1) The professional associations will elaborate their own code of conduct, by observing the principles from this template for a code of conduct. The code of conducts shall contain adequate rules for regulating the measure specific to the activity domain of that association, for the efficient application of the principles contained in this template for code of conduct.

(2) The codes of conduct which will be adopted by the professional association may be periodically reviewed according to the applicable legislative modifications and amendments, as well as with reference to the level of technological developments in the activity domain of each association.

(3) The professional association will submit the code of conducts to the supervisory authority for approval.

Legal framework of the code of conducts

Article 4

In order for the professional associations to elaborate the code of conducts based on the template for code of conducts, the legal provisions referring to the protection of the right to intimate, family and private life with respect to the processing of personal data shall be respected. The provisions of Law no. 676/2001, of Law no. 677/2001, as well as of Law no. 682/2001 shall be taken into account.

CHAPTER II: Principles of the processing of personal data carried out by the members of the professional associations

Legality and transparency

Article 5

(1) The members of the professional associations, hereinafter members, recognize and observe the right to intimate, family and private life.

(2) The processing of personal data by the members is carried out in conformity with the legal provisions.

(3) The members have the obligation to ensure the transparency of the processing of personal data.

Accountability

Article 6

(1) The members are responsible for the personal data being under their control, as well as for the data transferred to third parties.

(2) Each member will designate the persons which will be held accountable for the observance of the legal provisions from the protection of individuals and the personal data protection field.

Legitimacy of the collection purpose

Article 7

(1) The collection of the personal data through fraudulent, disloyal and illegal means is forbidden.

(2) The members will communicate the purposes for which the personal data are collected before or at least at the moment of the collection.

(3) The mention of the purposes can be done in written, orally or in electronic form, in a easy accessible language for the data subjects.

Consent

Article 8

- (1) The consent of the data subject is required for the processing of personal data, except for the cases where the law states otherwise.
- (2) The members will use any means in good-faith, which requires reasonable financial costs, in order to inform the data subjects about the processing of personal data and to ask for their consent at the moment of collection of personal data.
- (3) The data subject can withdraw his/her consent in any moment, subject to prior information of the data controller. The latter one will inform the data subject with regard to the procedure and the effects of the consent withdrawal.

Legitimacy of the disclosure

Article 9

- (1) The members will process the personal data only for the purposes for which the data were collected, except for the case when the data subject gave his/her consent for the processing in other purposes or for other cases allowed by law.
- (2) The access to the processed data will be allowed only to the employees of the members, in order to fulfill their tasks

Legitimacy of the storage

Article 10

- (1) The members have the obligation to keep the personal data accurate, complete and up to date in order to achieve the purposes for which are used.
- (2) The inaccurate or incomplete data will be deleted or rectified.
- (3) The personal data will be kept only for the period necessary for the achievement of the purposes established.
- (4) The members will adopt special rules for the establishment of the minimum and maximum period of time for the retention of the data collected, by observing the rights of the data subject, especially the right of access, of intervention and to object.
- (5) Following the periodical check, the personal data held by the data controller which no longer serve the purpose or the fulfilment of certain legal obligations will be destroyed or transformed in anonymous data in a reasonable period of time, according to the procedures established by law or by the members, when such legal provisions are not in place.

Security of the processing

Article 11

The members have the obligation to adopt the necessary technical and organisational measures in order to ensure an adequate level of protection and security within the operations carried out upon the personal data for the following purposes: to limit the access to the databases, which is allowed only to authorised persons; to prohibit the copy of the data outside the places where they are administrated; in general, in order to prevent any uncontrolled circulation of the data.

Right to information

Article 12

- (1) The strategies and the procedures used by the members in connection with the processing of personal data will be made available for the data subject, as information

provided in an accessible language, through physical, telephone or electronic means (for example brochures).

(2) The members will communicate the information, following a request, concerning the personal data processed, the sources from where the personal data were collected, the purposes of the processing and if and to which third party the data were disclosed when the law does not prohibit.

(3) When the disclosure of the data is imposed by law (for example for a court decision), the members will ensure that the third party asking for the disclosure is action according to the legal provisions and the request concerns only the no excessive personal data by reference to the purpose of the processing. The data subject will be informed about the disclosure only if the law allows it.

(4) Bringing to the knowledge of the data subjects of the rights which are granted (especially the right provided by Article 12-15 of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data) can be accomplished through some mentions inserted on the products' or services' offers, on the first document addressed to the data subject (for example: invoice, delivery table, acknowledgement of receipt etc.), on the prospectuses that contain also questionnaires etc.

Right of access

Article 13

(1) The members shall allow the access to the data subjects to personal data concerning them, by using the easiest methods which can be available in a reasonable way.

(2) The access of the data subject cannot be allowed, except for the cases provided by law, in the following situations: when the safety or the life of another person can be affected; when data concerning confidential commercial information can be requested; when it would prejudice the resolution of a dispute or a criminal trial.

(3) The members have the obligation to motivate the refusal of allowing access to certain personal data.

Right of intervention

Article 14

(1) The data subjects have the right to ask for the verification of the accuracy and the complete character of the personal data concerning them, as well as to ask for the rectification of the inaccurate or incomplete data, by formulating certain appeals.

(2) The members shall keep an evidence of the appeals referring to the accurate or complete character of the data which have not been solved and, when the data will be transferred to other data controllers, the data which have been rectified or for which there are unsolved appeals shall be underlined.

(3) The provisions of paragraph (2) are applicable also for the disclosure to third parties, as the case may be.

(4) The updating of the databases is carried out through the information transmitted by the data subjects, as well as through the information provided by any external source authorised by law.

Right to object

Article 15

- (1) The exercise by the data subject of the right to object to the processing of personal data in direct marketing operations is ensured through the submission of requests or through the inclusion in the lists of individuals who object. The data subject will be informed about these lists to object, as well as about the way to ask for their insertion.
- (2) The data subjects can exercise the right to object at any moment, preferably in a reasonable time provided by the data controller, without prejudice to the possibility for the right to be exercised outside this deadline.
- (3) Those lists are administrated by the professional associations.
- (4) For the onward processing, as well as for the transfer to other data controllers, the members will ensure that is not about the data for which the data subjects have previously exercised their right for the deletion of data or their right to object to their transfer.

Legitimacy of transfer

Article 16

- (1) For the situation of the personal data transfer to other data controllers, especially for direct marketing operations, the data subjects will be informed about the transfer by inserting some mentions on the products' or services' offers.
- (2) The mentions provided by paragraph (1) will contain also the specification of the right to object to the data transfer, as well as of the method through which the data subjects can exercise this right.
- (3) The safeguards for ensuring the protection of personal data within the data transfer to other data controllers will be provided by the contractual clauses concerning the usage of these data, as the case may be. These clauses will mention, among others, the rights granted to data subjects, as well as the fact that these rights can be exercised only by observing the confidentiality of certain commercial clauses.

Solving complaints

Article 17

- (1) The members have the obligation to solve the complaints and any other requests related to the processing of personal data, within period of time and conditions provided by law.
- (2) The procedure of receiving, investigating and solving of complaints and other requests from the data subjects will be established by the members and will be brought to the attention of the data subjects.

Cooperation with the supervisory authority

Article 18

- (1) On an annual basis or whenever is required, the members shall submit to the supervisory authority of personal data processing reports or synthesis on the complaints received and the manner of their settlement.
- (2) The reports and synthesis mentioned in paragraph (1) could contain also other information concerning the activity of the members in the personal data protection field, as well as improvement proposals of their activity.

Expenses incurred by the data subjects

Article 19

The members will implement measures in order to ensure a reasonable level of the expenses related to exercising the rights provided by law and the codes of conduct, expenses which shall be borne by the data subject, except for the case when these rights can be exercised free of charge.

CHAPTER III: Final and transitory provisions

Method of application

Article 20

(1) The provisions of this template for a code of conduct will be taken into account when adopting their own codes of conduct by the professional associations which process personal data.

(2) The rules of this code of conduct should be viewed as a recommendation.

(3) This template for a code of conduct is completed by the legal provision from the personal data protection field.

Modification and amendment of the template for a code of conduct

Article 21

(1) The members of the professional associations or the interested individuals may propose modifications or amendments of this template for a code of conduct.

(2) The motivated proposals mentioned in paragraph (1) shall be transmitted in written to the supervisory authority.

(3) The supervisory authority shall take into consideration only the relevant and valid proposals in order to modify and amend this template for a code of conduct.

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