

Chapter 4.9

Cross–Border Transfer of Personal Data: The Example of Romanian Legislation

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ABSTRACT

This chapter outlines the Romanian data protection legal regime governing the cross-border transfers of personal data, both to countries located in the European Union (EU) or in the European Economic Area (EEA), as well as to non-EU or non-EEA countries. In addressing the Romanian legal requirements related to international transfers of personal data, a high level insight into the background of Romanian data protection principles and main rules applicable in the broader context of privacy proves useful. Although this chapter analyzes mainly the Romanian legal regime of data protection, with a special emphasis on cross-border transfer of personal data, a similar interpretation and application of the data protection related requirements may also be encountered in other European jurisdictions. While expounding primarily on data transfer related matters, this chapter also looks at how the EU Data Protection Directive (Directive No. 95/46 EC), as well as the relevant secondary legislation in the field of data protection, has been implemented into Romanian law.

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1. INTRODUCTION

In a world characterized by constant interaction between individuals' fundamental rights (including the right to privacy) and global corporate entities highly business oriented, data protection is a noteworthy area whose complexity and requirements may give rise to major practical concerns. In order to mitigate potential issues arising thereof (as their elimination may prove difficult, despite any intent to observe data protection requirements), both companies engaged in businesses covering a worldwide area, as well as locally based companies should be aware of the major importance that data protection requirements have over their businesses. As transfers of personal data frequently occur in the international business environment, and the processing of personal data of the companies' clients, employees, partners etc. is usually inherent to the companies' day-to-day activity, consideration to the specific Romanian requirements for cross-border transfers of personal data should be given. Moreover, as such transfers of personal data represent a form of data processing (as such concept will be further explained herein), the present paper also reiterates the general principles applicable to the personal data processing, as set forth by Romanian legislation in force as of March 31, 2010.

In line with European legislation aimed at offering an adequate level of data protection, Romania has implemented the EU Data Protection Directive that sets out the legal framework for the processing of the individuals' personal data. The Romanian implementation law no. 677/2001 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the "Data Protection Law"), as well as the secondary domestic legislation, generally takes over the key concepts and principles of the EU Data Protection Directive, thus integrating itself into a system of supranational law focused on facilitating the free movement of personal data.

Although the main subject of this paper is represented by the requirements set forth by the Romanian legislation in the field of cross-border transfer of personal data, certain preliminary observations should be nevertheless made with respect to the general principles arising out of the Data Protection Law, as well as a brief outline of the main data protection related concepts.

2. BACKGROUND OF ROMANIAN DATA PROTECTION LAW

Giving effect to the EU Data Protection Directive that "seeks to establish an equivalent level of protection for personal data in all Member States, so as to facilitate the transfer of personal data across national boundaries within the European Union" (Carey, 2009, p. 6), the Romanian Data Protection Law has as its main purpose the protection of the individuals' fundamental rights and liberties, especially the right to intimacy, family and private life, with respect to the processing of personal data.

2.1. The Main Features of the Romanian Data Protection Law

The main features of the Romanian Data Protection Law are given by the following aspects:

2.1.1. Scope of Application

The Data Protection Law is intended to apply to personal data processed wholly or in part by automatic means, as well as to processing of personal data within an evidentiary system or data that are intended to be included in such system by other means than the automatic ones. The abovementioned law applies to the processing of personal data carried out by either natural or legal persons, Romanian or foreign, public or private entities, irrespective of whether the processing is performed in the public sector or in the private

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