

MEP Sophie In 't Veld
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By e-mail only

Brussels, 23 January 2019

Ref: SH-423-2018

Subject: Letter from 12 November 2018 on Romanian DPA Investigation

Dear Ms in 't Veld,

I would like to thank you for the letter you sent me on 12 November 2018 on the order issued on 9 November by the Romanian data protection authority to investigative journalists of the RISE project, to disclose their sources on the basis of the General Data Protection Regulation (GDPR).

As foreseen in article 58 GDPR, each Supervisory Authority (SA) has the power to request any information from a controller or from a processor in the context of a given processing operation that is necessary for the performance of its tasks. The fundamental right to the protection of personal data that such power aims to protect, however, has to be balanced against the protection of other equally important fundamental rights (such as the right to freedom of expression and information). It goes without saying that the protection of journalistic sources is a cornerstone of the freedom of the press.

Furthermore, such powers must take into consideration the requirements foreseen in article 85 GDPR, which mandate a legal reconciliation of both fundamental rights, including in cases where processing for journalistic purposes is involved. Even though article 85 leaves such task to Member States, it is clear that such reconciliation must always be done in respect of chapter VII GDPR and of the applicable jurisprudence of the CJEU and the ECtHR.

Moreover, it is also essential to add that such powers should be exercised in a proportionate manner and based on an individual assessment of each case. The same reasoning is applicable to any fines issued by an SA under the GDPR: they need to be imposed casuistically and be, not only effective and dissuasive, but also proportionate to the demonstrated infringement.

I would like to underline that the European Data Protection Board (EDPB) does not have the same competences, tasks and powers as national supervisory authorities. The assessment of alleged infringements of the GDPR in first instance falls within the competence of the responsible and independent Supervisory Authorities of each Member State, either by themselves or in cooperation with other SAs. A judicial remedy will always be available in accordance with article 78(1) GDPR.

Yours sincerely,


Andrea Jelinek

Andrea Jelinek
Chair of the European Data Protection Board

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