

INSTRUCTION

No. 16 Date 26.12.2011

On

“The protection of personal data in direct trade and security measures”

Pursuant to letter “c” of clause 1 of article 30 and letter “f” of clause 1 of article 31 of law No. 9887, date 10.03.2008 “On the protection of personal data” amended to law No. 48/2012¹, the Data Protection Commissioner:

INSTRUCTS:

The terms used in this instruction have the same meaning as that of the law “On the protection of personal data”².

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Chapter I

Personal data protection

1. The controller collects the data legally and informs the data subject.
2. The controller ensures that the data subjects are informed on:
 - The identity of the controller;
 - The purpose of the processing;
 - Their right to access and correct inaccurate data related to him/her;
 - Their right not to be subject to data processing for the purposes of direct marketing;
 - Their right to object to the processing of their data for the purposes of direct trade;

The information in the first two cases is essential and is given at the time of collection regardless of whether it is clear from the processing context or the data subject has this information.

¹ Added to Instruction No.29, date 27.12.2012

² Amended to Instruction No. 29, date 27.12.2012

³ Repealed by Instruction no. 29, dated 27.12.2012

⁴ Repealed by Instruction no. 29, dated 27.12.2012

⁵ Repealed by Instruction no. 29, dated 27.12.2012

⁶ Repealed by Instruction no. 29, dated 27.12.2012

⁷ Repealed by Instruction no. 29, dated 27.12.2012

The controller obtains the consent of the subject to whom the personal data are processed for the purposes of direct trade. The data subject has the right to withdraw his consent to direct trade at any time.

3. Dealing with specific situations

3.1. In cases where the data are intended to be used for direct trading, the controller shall ensure that the data subject is aware of the information under definitions in clause 2.

The controller provides this information at the time of data collection, but if this is difficult or impossible due to applicable law, this information is provided as soon as possible.

3.2. In case the data will be disclosed to third parties, the controller ensures that the data subject is informed on:

- Any data recipient and the purpose for which the data is disclosed;
- Their rights to oppose proliferation for direct commercial purposes.

This information is provided at the time of data collection, but if this is difficult or impossible due to applicable law, this information is provided before the data is disclosed to third parties.

4. Information in cases of using questionnaires and other forms.

4.1. The controller ensures that the data subjects are informed whether the answers to the questionnaire are mandatory or voluntary and about the consequences if they do not answer the questionnaires. The controller also ensures that no unnecessary questions are asked. The information in the case of completing the questionnaires is given at the **time of the meeting**.

Chapter II

Collection from various other sources from the data subject

1. When the controller does not collect the data from the subject itself, he is obliged to take some steps to ensure that the data subjects are however aware of the information he would have had if he had contacted the data controller directly.
2. The controller provides the information mentioned in the aforementioned point:
 - at the time of data recording / processing; or
 - When the notice of disclosure to third parties is made before the disclosure took place, although the data subject was informed.
3. The requirements mentioned above do not apply when they require high financial costs to provide such information or when any additional safeguards have been met.

Chapter III

Sensitive data collection

1. If the collection of personal data includes sensitive data, the controller requires the clearly expressed consent of the data subject for their collection and processing.
2. Clearly expressed consent is the consent given voluntarily by the subject and that there is no doubt that he understands the action he is performing and the consequences that come from giving it and the opportunity to withdraw it at any time. Expressed consent does not necessarily mean in writing, except:
 - a) when the data have been made public by the data subject himself;

- b) Whether the data is processed by a non-profit organization with a political, philosophical, religious or trade union orientation. If these organizations have processed the data without the express consent of the data subject, for the processing to be lawful he must meet the following criteria:
- Processing is done for the legitimate activity of the organization;
 - Appropriate guarantees are provided;
 - Processing relates only to members of the organization or persons with regular contact with it;
 - Processing is done for the purposes of the non-profit organization;
 - The data should not be disclosed to third parties without the consent of the data subject.
3. If we are not in the above circumstances, the controllers use the data in such a way that it does not affect the fundamental rights and freedoms of the data subjects.
4. When sensitive data collected in connection with direct trading activity is further processed for statistical purposes, it becomes anonymous or transformed in such a way that it does not allow the identification of the data subject, except when the controller has obtained the express consent of subject.

Chapter IV

Processing for different purposes

1. If the controller processes the data for purposes other than the one for which they were collected, verify that the new purpose matches the first purpose. If there is compliance, new processing is allowed, on the contrary, new processing is allowed only in accordance with the law on personal data protection.
2. In reviewing the compatibility of the first goal with the new goal, the data controller takes into account the following criteria:
 - a) whether the new purpose is fundamentally different from the purpose of the meeting;
 - b) whether the data subject has objected to the processing for the new purpose;
 - c) Applicable law and cases reviewed by the Personal Data Protection Commissioner.

Chapter V

Host Mailings

The controller, in the case of the Host Mailings server holder, must be clearly identifiable.

Selection criteria that have a detrimental effect on the rights of the data subject are not used.

Chapter VI

Processing data for minors

1. At the juvenile data collection, the controller ensures that the parent or legal guardian is informed of the purposes of data processing.

In cases where minors are approached with material in the field of business or when data is collected from minors, the information should be visible, legible and understandable by them.

2. When the juvenile's consent to the processing is asked, the data controller obtains the clear consent expressed by the juvenile's parent or legal guardian.

3. The juvenile's parent or legal guardian enjoys the same rights as the minor as a data subject. The auditor verifies that the person exercising the rights of the minor is his parent or legal guardian.
4. The controller, in cases where the juvenile participates in a game, for the price offered or any other action that requires the dissemination of his data, collects only sufficient data for to participate in this activity.

Chapter VII

Responsibilities

1. The controller, if he hires a processor to fulfill his purpose, enters into a contract with the latter to provide instructions. The responsibility for this type of processing falls on the controller and is not transferred by contract to the processors.

Chapter VIII

Security measures

1. Controllers use appropriate security measures, taking into account the costs and condition of the technology, the manner of implementation and the sensitivity of the information to prevent any accidental loss or destruction, dissemination or unauthorized access to personal data. For greater security, controllers must take specific security measures.
2. These measures include, among others, the security of buildings in which personal data is collected (including building entrances), the list of persons authorized to have access to data, appropriate mechanisms, security measures for data transfers between the controller and the data processor.
3. The controllers ensure that any processor they contract guarantees appropriate security measures.

Chapter X

The subjects Requirements

1. Access to data
 - a) any data subject has the right to request from the data controller:
 - Confirmation of whether or not related data is being processed, the purposes of the processing, the categories of data being processed, the categories of recipients or those to whom this data is disclosed;
 - Communication in an understandable way about the processing process and information regarding their source;
 - Information regarding the logistics used in automatic processing and cases of automatic decision making.
 - b) the controller who receives a request from the data subject:
 - receives additional information regarding the identity of the applicant and ensures that the subject is legitimized to have access to data;
 - responds to the subject's requests in a comprehensible way by providing all the necessary information;

Chapter XI

Data sources

When the controller receives a request in writing or in any other form, from the data subject where the source of the collected data is requested, the controller evaluates the legality of the request. If the request is lawful and the source can be identified by reasonable means, communicate this information to the data subject. If the data is collected from several sources, the controller keeps a list of these sources.

Chapter XII

The last

All public and private controllers in the territory of the Republic of Albania are responsible for the implementation of this instruction.

Failure to comply with the requirements of this instruction constitutes a violation of the law on personal data protection and is punishable under Article 39 thereof.

This instruction enters into force immediately and is published in the Official Journal.

THE COMMISSIONER

FLORA ÇABEJ (POGAÇE)