

## **INSTRUCTION**

**No. 44, dated 31.08.2016**

### **“ON PROCESSING CONDITIONS AND CRITERIA AND PERSONAL DATA RETENTION PERIOD”**

Pursuant to Article 16/3 and Article 24/3 of the Law No. 60/2016 “On whistleblowing and protection of whistleblowers”, the Information and Data Protection Commissioner (hereinafter the Commissioner),

#### **INSTRUCTS:**

Determining the processing conditions and criteria and personal data retention from the responsible units of every public authority and private entity as well as from HIDAACI according to the Law No. 60/2016 “On whistleblowing and protection of whistleblowers”.

#### **CHAPTER I**

##### **GENERAL RULES**

1. In application of the Law No. 9887/2008 “On personal data protection”, as amended, every public authority and private entity whereas a responsible unit is appointed according to the Law No. 60/2016 “On whistleblowing and protection of whistleblowers”, as well as HIDAACI, are controllers as they process personal data.
2. Every data subject involved in whistleblowing or any participating party in the administrative investigation process, enjoys the rights stipulated in the data protection legislation for any processing that has been deemed be carried out illegally.
3. In any event, where the responsible unit processes sensitive data in the public interest, prior to making the information public, the controller should obtain authorization from the Commissioner according to Article 7/2/c of the Law No. 9887/2008 “On personal data protection” as amended.
4. Every controller prior to the processing of personal data from the responsible unit, completes and submits with the Commissioner’s Office the notification or updates it, according to Article 21 and 22 of the Law No. 9887/2008 “On personal data protection” as amended.
5. The terms used in this instruction have the same meaning with those in the Law No. 9887/2008 “On personal data protection” as amended.

CHAPTER II  
PERSONAL DATA SAFEGUARDS AND CONFIDENTIALITY

6. Every controller determines a special regulation on the protection of personal data and maintaining their security, appropriate organizational and technical measures on the nature of personal data processing, which should be taken and implemented by the responsible unit.
7. The processing of personal data is carried out particularly in accordance with the following security measures:
  - a) Access to personal data should be exercised by the responsible unit;
  - b) Every action performed upon personal data should be documented;
  - c) Every action carried out to transmit personal data with other bodies should be documented and traceable;
  - d) Copying, alteration, rectification, erasure and any other unauthorized action on personal data is prohibited, in the course of their transmission in systems or during transfers of the relevant records.
  - e) Failure of systems in data processing cases should be reported and the data should be safeguarded and not violated.
  - f) Controllers are recommended to obtain certification of information security management systems, personal data and their protection, in accordance with personal data protection legislation.
8. Employees in the responsible unit and HIDAACI being informed on the data processed, in the course of performing their functions, are bound to sign a confidentiality declaration in order to preserve confidentiality and trust on the information they know also after the completion of the function. These data will not be disclosed except in cases provided for by the law.

Violating the obligation of confidentiality consist in a criminal offence set forth in Article 121 of the Criminal Code.
9. Concerning the processing of personal data manually, the following provisions apply:
  - a) All manually processed documents are safeguarded to prevent disclosure of personal data, destruction, illegal or accidental loss both in the work place and during their transmission;
  - b) Making available requested copies may be carried out on condition that further tracing of their use to the destruction or their anonymisation.
10. The responsible unit and HIDAACI in order to comply with the Law No. 60/2016, in any case will implement the instruction of the Commissioner No. 21 dated 24.09.2012 “On determining rules for safeguarding the data processed by large controllers” as amended.

CHAPTER III  
PERSONAL DATA RETENTION DEADLINE

11. Personal data contained in documents are held for a 60 day period corresponding with the receipt of the final decision of the administrative investigation.
12. Personal data contained in documents are immediately destroyed after receiving the decision to not initiate an administrative investigation.
13. Differently from provisions in point 11 and 12 of this instruction, the controller may re-evaluate only once the data retention period and at once notifies the data subject or the parties undergoing process accordingly. Any extension of deadline on data retention should be justified.
14. Upon the expiration of data retention period, the data subject becomes unidentifiable from all data processing active systems, either automatic or manual.
15. Upon the expiration of retention period, documents which do not contain personal data, will be archived in case there is such legal requirement, while documents containing personal data will:
  - i. Be physically destroyed; or
  - ii. Irrevocably become anonymous.

CHAPTER IV  
FINAL PROVISIONS

16. Failure to implement requirements of this instruction will be subject to sanctions of the Law No. 9887/2008 “On personal data protection”, as amended.
17. As provided for in point 1 of this instruction, controllers are bound to implement this instruction.

This instruction enters into force after the publication on the Official Gazette.

COMMISSIONER  
**BESNIK DERVISHI**

**Important note: the letters used to list provisions are not the same as in the original text, but rather they are inserted based on English alphabetic order.**