



REPUBLIC OF ALBANIA

**INFORMATION AND DATA
PROTECTION COMMISSIONER**

**MINISTRY OF INTERIOR
AFFAIRS**

No. _____ Prot. dated __.__.201

No. _____ Prot. dated __.__.2016

JOINT INSTRUCTION

No. ____, dated __.__.2016

ON¹

PROCESSING OF PERSONAL DATA BY BORDER GUARDS

In accordance with point 4 of Article 102 of the Constitution and point 3 of Article 20 of the Law No. 71/2016 “On border control”, the Minister of Internal Affairs and the Information and Data Protection Commissioner

INSTRUCT:

1. In the context of border control, Border Guards collect personal data to the extent as may be necessary in order to accurately identify individuals that aims to cross the border, crosses it, or either has crossed, as well as the documentation and means of travelling that individuals use to cross the border, along with the reason for crossing the border, the time and exact location of where and when the border is to be crossed or will be crossed, aiming at ensuring border security and internal security, as well as prevention, revealing and investigation of illegal migration and cross-border crime.
2. In the border control framework, Border Guards use personal data and utilize them, as much as necessary for performing an appropriate border inspection, aiming at ensuring border security and internal security, as well as prevention, revealing and investigation of illegal migration and cross-border crime.
3. Pursuant to point 1, Border Guards collect and register personal data of:
 - a. Foreign citizens whose entry to the Republic of Albania is refused;

¹ This instruction is partly aligned with Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 “on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)”, CELEX 32016, Official Journal of the European Union, series L, no. 77, dated 23.3.2016, pages 1 - 52

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- b. Persons whose exit from the Republic of Albania is refused;
 - c. Foreign citizens whose travelling document, pursuant to point 4 of Article 16 of the Law No. 71/2016, “On border control”, is not stamped;
 - d. Foreign citizens receiving visa upon arrival at the border control;
 - e. Persons whom receive, from Border Police and Migration Police, or either crossing the border, documents that replace visa and traveling documents;
 - f. Persons returning or repatriated from foreign authorities in the Republic of Albania, or either form Albanian authorities to another country;
 - g. Persons whom have illegally crossed or have attempted to cross the border;
 - h. Individuals filing complaints or requests in terms of border control;
 - i. Individuals carrying out administrative offences under the jurisdiction of Border and Immigration Police;
 - j. Individuals committing criminal offences under the jurisdiction of Border and Immigration Police;
 - k. Individuals entering and exiting the border, when electronic instruments or electronic storage registering entries-exits is not operating for a long period, and the data are collected in a temporary written register.
4. In accordance with point 1, Border Guards, in addition to the data set forth in point 3, may also collect and register the following documentation containing personal data:
- a. Interviews of returned and repatriated in Albania, as well as on the persons whom have crossed or have attempted to cross the border irregularly, when this information is necessary for revealing criminal offences and administrative violations or identification of potential human trafficking;
 - b. Additional documentation for crossing the border, such as certificate, invitation, notary statement, contract, etc.
 - c. The original list or copies of lists of passengers traveling with vehicles that are required to complete and submit these lists;
 - d. Pictures and videos taken through devices of border control, when these devices enable this manually or automatically and the data concerned are necessary for the detection of criminal offences and administrative contraventions, or for the identification of potential human trafficking;
 - e. Pictures and videos from security cameras and other devices installed in the premises used by Migration and Border Police for purposes of border control.
5. For the purposes of border control, Border Guards, in addition to personal data and documentation stipulated in point 3 and 4, review and use the following documentation containing personal data:
- a. Notes, notices and information of law enforcement authorities, featured automatically or upon searching in the electronic systems, as well as those that are submitted in a written form and that are defined as necessary to be reviewed and used during border control;
 - b. Electronic storage and registers in a written form, which upon agreement, law or decision of responsible authorities, are defined as necessary to be reviewed and used during border control.

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6. Registrations for verifications of the second line and those for identification of potential human trafficking, are carried out only on statistical basis that does not reveal any personal data of the persons. Practical rules on this cases are determined with Standard Procedures of Action of the Migration and Border Police.
7. Collection, registration, consultation and use of data set forth in points 3 and 4, as well as the consultation and use of data stipulated in point 5, is performed in such a way that the border guard that collects, registers, consults or/and uses the data, as well as the authorized or decision making employee for these actions of the border guard, be identifiable.
8. All registration performed in written archive from border guards may be stored electronically, when a decision for such establishment is taken by responsible authorities.
9. In cases stipulated in point 8, written archive which are stored electronically are destroyed as soon as possible, but no later than 30 days since storing them electronically. Previous written archives, which are not stored or may not be stored electronically, will be kept up to the provided deadline for irrevocable anonymisation according to the provisions of point 13 or are deleted as provided for form point 14.
10. Subjects' data stipulated in point 3/k are necessarily stored electronically on entries-exits within 5 days since the activation of the system where the data are recorded, while the written register concerned will be destroyed within 7 days since the data were stored electronically.
11. Practical arrangements on taking the decision for registration in the written register, the manner of this registration and process of storing them electronically as provided in point 3/k, as well as on the means of destruction of the respective written register, are determine by Standard Procedures of Actions of Migration and Border Police.
12. In the course and to the purpose of border control, border guards review and directly use the abovementioned data, on basis of the need to know, according to the following deadlines:
 - a. 2 years for the entries-exits electronic storage;
 - b. 1 year for the data set forth in point 3, except for letters "j" and "k";
 - c. As long as it is provided for in Instruction No.17, dated 11.05.2012 of the Information and Data Protection Commissioner, for the data stipulated in point 3/j;
 - d. To the time of destroying the register for the data set forth in point 3/k;
 - e. 1 year for the data set forth in point 4, letters "a", "b" and "c";
 - f. In the course of manual or automatic storage provided by the respective device for the data of point 4, letters "d" and "e", but no longer than 1 year;
 - g. With no restriction to the active notes and notices stipulated in point 5/a;
 - h. 3 months after cancellation, revocation or the termination of deadline validity of notes and notices provided for in point 5/a;
 - i. Throughout the agreement legal power, the law or decision for access, for the data stipulated in point 5/b.
13. Personal data collected by the border guard, in accordance with point 3 and 4, will be irrevocably anonymized when meet these deadlines:
 - a. 2 year for the data set forth in point 3, letters "a", "b", "d", "e", "f", "g";
 - b. 6 months for the data stipulated in point 3/h;

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- c. As long as it is provided for by the law on administrative contraventions, for the data set forth in point 3/i;
 - d. 1 year for the data set forth in point 3/c and for the data provided for in point 4;
 - e. As long as it is stipulated by the Instruction No. 17, dated 11.05.2012 of the Information and Data Protection Commissioner and legal acts under its application, for the data set forth in point 3/j;
 - f. 3 months after the expiration of deadline or validity of the action required in the written document, for the data provided for in point 5/a;
 - g. 5 years for entries-exits stored electronically.
14. If the irrevocably anonymisation, stipulated in point 13, is technically impossible, the data concerned will eventually be deleted.
 15. The Center for the Processing and Protection of Data, based on the right to be informed provided for by the legislation or agreements in force, defines the institutions and structures that access and directly use data collected and recorded by border guards in the electronic storage, as well as manages the users.
 16. With reference to special cases, for which a respective user requires, due to his duty, to access the data beyond the provided deadline of reviewing and directly use on the structure where the user is part, the request for access, its approval, providing and closure of access, are determined under the Order of the State Police Director.
 17. Migration and Border Police make available to other authorities, collected data by MBP, in terms of Article 20/1/d of the Law No. 71/2016 “On Border Control”, only in case when these data may not, or may not be reviewed and directly use from the authority requesting the data.
 18. The Information and Data Protection Commissioner assesses periodically, as well as on a case-by-case basis, compatibility of the data processed according to the provisions of point 3, 4 and 5, with the purpose of their processing.
 19. Subjects whose data are collected and recorded by border guards pursuant to the Law No. 71/2016 “On border control”, may exercise their right to know through the State Police responsible structures for informing citizens, determined by the Order of the State Police Director.
 20. The General Directorate on Border and Migration undertakes measures to implement deadlines set forth in this instruction on written archives.
 21. The responsible structure on Information and Technology within the State Police Directorate takes measures for the implementation of the deadlines on retention, access and irrevocable anonymisation or erasure of personal data that are processed in the electronic storage for the purposes of border control.

This Instruction enters into force after the publication in the Official Gazette.

**INFORMATION AND DATA
PROTECTION COMISSIONER**

**MINISTER
OF INTERNAL AFFAIRS**

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BESNIK DERVISH

SAIMIR TAHIRI

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