

INSTRUCTION
No. 19, date 03.08.2012

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ON

**“REGULATION OF THE RELATIONSHIP BETWEEN THE CONTROLLER AND
THE PROCESSOR IN CASE OF DELEGATION OF PERSONAL DATA
PROCESSING AND MASTER CONTRACT FORM FOR SUCH LEGAL
ARRANGEMENTS”**

Pursuant to letter “c”, clause 1 of Article 30 and letter “f” of article 31 of the Law No. 9887, date 10.03.2008 “On Protection of Personal Data”, amended, the Commissioner for the Protection of Personal Data, gives the following

INSTRUCTIONS:

1. The purpose of this instruction is to establish the rules regarding the relationship between controllers and processors in case of delegation of personal data processing, and adoption of a standard contract sample that the parties shall use for such delegation. The contract sample is part of Annex I to this instruction.

2. This instruction is applicable by all companies, organizations or institutions, which, while performing their legitimate duties, enter into relationships with third companies and, agree, under a contract, that such third companies perform the processing of personal data on their behalf. The implementation of this instruction is intended to ensure the inviolability of personal data in every step of such processing.

3. For purposes of making easier the application of this regulation the terms used herein have the following meanings:

- “*Controller*” is any natural or legal person, public authority, agency or any other body, which alone or jointly with others stores, administers, and controls personal data, and for purposes of their processing enters into a contractual relationship with a third company, which in such case shall be the *processor*.

¹ The translation was commissioned by the EU funded Project "Strengthening of the Data Protection Commissioner office in Albania, for alignment with EU standards"

-“(Outsourcing) Processing Contract” is the main act under which the controller asks the processors to perform on his behalf a part of processing of personal data.

- "Processor" is any company, which enters into a contractual relationship with the controller for the purpose of processing personal data on behalf of the controller;

- “Violation of personal data” is the infringement of data security causing destruction, loss, alteration, unauthorized disclosure or modification of personal data transmitted, retained or processed.

In any case, these definitions do not replace, nor prevail over the definitions provided by the Law no. 9887, dated 10.03.2008, "On the Protection of Personal Data, amended.

4. Any outsourcing contract that has the object of processing personal data shall include provisions that define the rules for processing of personal data under the Albanian law. Such contract shall provide for each measure to be taken by the Processor to ensure sufficient protection of data, as well as the steps to be taken in case of violation of such data.

5. During its operations of collection, storing, or any other processing of personal data, the Controller may enter into a contractual relationship, under the Albanian legislation. This contractual relationship may be with any Albanian or foreign company, which offer such services. In order to assure a good selection of the processor, the controller shall assess the following:

a) To select a company having good reputation in this field, and which offers permanent guarantees for the security of personal data to be processed;

b) The contract with the Processor shall be in written form and contain specific provisions governing the protection of personal data;

c) In case the processor is a foreign company, the controller ensures that the countries, where the processor operates, make part of the countries offering adequate protection of personal data under Albanian law. The controller shall assess even the cases when the company has subcontracted processing. The controller shall pay attention to determine the level of protection of personal data throughout the whole process steps. The Controller shall refer the list of countries that offer adequate protection approved by DCM No. 934, dated 09.02.2009 "On definition of the countries having sufficient level of Personal Data Protection".

ç) The controller shall check the legislation of the country of origin of the processing company to make sure that the contract has effect in both countries.

d) The controller shall ensure that the processor provides appropriate protective measures for the data to be processed;

dh) The controller shall ensure that, as part of the appropriate protective measures, the processor controls sufficiently the personnel handling processing. For this purpose, the controller can refer to the security standards ISO-27000.

e) The processor shall report any breach of security and any other issue of interest for the controller to:

- i. Guarantee implementation of the legislation by applying adequate security standards and making adjustments after any possible violation thereof.
- ii. Allow the controller to be able to give information of the data subject upon request.

6. In cases where the processor makes data processing by subcontracting/sub-outsourcing another company, the subcontracted company is subject to the same appropriate security rules as provided in paragraph 5 of this instruction. Any subcontracting /sub-outsourcing contract shall be in written form and contains:

- a) Prior approval of the Controller,
- b) Controller's preliminary verification, that the subcontracted company has the same security level as the contracted company.

In any case outsourcing cannot have a security level lower than that agreed between the controller and the contracted company.

7. The processor is obliged to notify the controller in case of violation of personal data. The processor is not obliged to notify the data subject, in such case. If processing is performed by subcontracting, the subcontracted company has the obligation to notify the contracting company as well as the controller.

8. The outsourcing contract shall contain provisions to regulate the following:

- a) The moment when the processor shall notify the controller on the damage caused to:
 - i. the data subject, in case of unauthorized destruction, loss, modification, disclosure or alteration of the personal data transmitted, stored or processed;
 - ii. the controller, in case of damage related to the controller's business position and reputation.

8.2. The content of notification and its timing. The notification shall be made:

- without delay;
- in written form;
- contain full information on the type of violation of data and the consequences of thereof.

9. The controller and the processor always shall enter a contract in writing for the processing of personal data. To meet their goals, the controller and the processor can choose either the option to enter into a special contract for establishing personal data protection rules, or include it as part of their business contract. For personal data protection purposes, both cases are acceptable, as long as they establish clear rules and provide adequate personal data protection and security level in compliance with Albanian legislation.

10. The processing contract ensures that:

- a) the processor uses and discloses personal data only under the instructions of the controller;
- b) the processor takes all necessary measures to ensure adequate data protection.

11. The event of non-application of the requirements of this Instruction shall be considered as infringement of the Law on protection of personal data and it is punishable under article 39 thereof.

12. All controllers, entering into contractual relationship with a third company for processing personal data, are in charge of implementing this Instruction.

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

COMMISSIONER

Flora ÇABEJ (POGAÇE)

ANNEX I

Contract Form for outsourcing the processing of personal data to a third company

This contract is entered into between:

[Company Name], [Address] hereinafter referred as “*Controller*” and [Company Name], [Address] hereinafter referred as “*Processor*”

Article 1

Purpose

1. This contract is entered into between the Controller and the Processor in order to provide sufficient protection in case of processing personal data by Processor , delegated by the Controller, having its registered office in Albania, to the Processor, having its registered office in _____, for the purpose of processing these data on behalf of the Controller.
2. This contract is applicable for all personal data processing delegated by the Controller to the Processor and that are processed by the Processor on behalf of the Controller.

Article 2

Definitions

1. All terms in this contract take the same meanings as those defined in the Law No. 9887, dated 10.03.2008 "On Protection of Personal Data", as amended, unless explicitly defined otherwise.
2. For purposes of this contract the following terms have the given meanings below:
 - “*Controller*” is any natural or legal person, public authority, agency, company, organization or institution which stores, administers, and controls personal data, and for purposes of their processing enters into an outsourcing contractual relationship with a third company, which in such case is the *processor*.
 - "*Processor*" is the third company which enters into a contractual relationship with the controller to process personal data with the lowest cost on behalf of the controller;
 - “*Violation of personal data*” is the infringement of data security causing destruction, loss, alteration, unauthorized disclosure or modification of personal data transmitted, retained or processed.

Article 3

Duties of the Controller:

1. The controller ensures that personal data to be delegated for processing are collected and processed in compliance with the applicable law. The controller guarantees that the delegation of processing of such data is in compliance with the applicable law.

2. The controller is obliged:
 - a) to notify, before delegating the processing of personal data, the data subjects on such action, and the purpose thereof;
 - b) to inform, before delegating the processing of personal data, the Commissioner for Personal Data Protection under the provisions of Law 9887, dated 10.03.2008 "On Protection of Personal Data;
 - c) to verify the technical and organizational measures taken by the processor to ensure sufficient protection of personal data.

Article 4 Duties of the Processor

1. The processor is obliged to process the personal data received by the Controller and any other data resulting from such processing:
 - a) only on behalf of the controller and for the purposes defined by the Controller;
 - b) according to the instructions of the Controller, and
 - c) in compliance with this Contract.
2. Before starting the processing, the processor takes all technical and organizational measures to protect personal data received from the Controller, from any unauthorized processing, including destruction, loss, unlawful disclosure or damage thereof.
3. Processor notifies immediately the Controller in case:
 - a) It is unable to continue the implementation of this contract, or
 - b) It has occurred an accidental or unauthorized breach of personal data.
4. The processor shall not subcontract any third company for the processing without the prior written approval of the Controller.

Article 5 Subcontracting/Sub-outsourcing

1. In case of subcontracting, the processor is obliged to ensure that:
 - a) it has informed in advance the Controller and has received its written approval;
 - b) the outsourcing of processing is done only for the operations agreed upon in this contract;
 - c) the processor and the sub-contractor sign a contract under which the sub-contractor has the same obligations as the ones of the processors provided under this contract;
 - ç) A copy of the sub-outsourcing contract is sent to the controller.
2. If the Subcontractor does not meet the obligations under this contract, the liability for the breach of data remains to the Processor, under the provisions of this contract.

3. The controller has the right at any time to control the observance of this contract by the processor, or to ask that such control is carried out by a certified third party. In this case, the processor provides full collaboration, and the control cost is borne by the Controller. In case the control shows that the processor has not acted under this contract, the control costs are to be paid by the processor.

Article 6

Settlement of Disagreements

Settlement of disagreements between the parties of the contract can be reached through understanding. In the contrary, the parties address to the competent court.

Article 7

Sanctions

In the event of non-fulfilment of the obligations of the parties as defined under this contract, the sanctions provided by the legislation into force are applicable.

Article 8

Terms and termination of contract

1. The duration of this contract is _____.
2. Each party may terminate this contract before its deadline.
3. Upon termination of this contract, the processor:
 - a) turns back immediately to the Controller any personal data and their copies received by the Controller, as well as those resulting from the processing;
 - b) In case such turning back is impossible, the Processor destroys any personal data and any copies thereof and immediately notifies the Controller in writing.
4. In any case the processor is bound to maintain the confidentiality of personal data processed or of the data resulting from this processing.

Article 9

Final Provisions

1. A copy of this contract is provided to the Commissioner for Protection of Personal Data immediately after signature, and to the competent court or the data subject, upon request.
2. The rights and obligations of the parties to this contract shall not prejudice or affect the rights and obligations of these parties, deriving under other contracts or the legislation into force.

3. This Agreement is amended only in writing.

Place, Date:

For the Controller:

For Processor:

[Name], [Position]

[Name], [Position]

[Company]

[Company]