



# PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

## New era for US privacy laws: California and more

No US federal privacy law is in sight but keep a close eye on California and rapidly expanding enforcement and litigation risks. By **Laura Linkomies**.

The California Consumer Privacy Act (CCPA) will come into effect from 1 January 2020 and be enforceable by California's Attorney General from July 2020. The law, often compared somewhat erroneously with the GDPR,

was amended in September and will be implemented through regulations that will be finalised in Spring 2020.

Latham & Watkins lawyers offered invaluable insights into the

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## DP is central to Germany's Facebook competition case

**Stewart Dresner** reports from Brussels on the rationale for the German competition authority's decision on Facebook's abuse of its dominant position.

Personal data plays a key role in data-driven services such as social networks, online search, or so called "digital assistants" which are part of our everyday lives. Global players acquire these data while offering their services at first glance

for free. With regard to these strongly data-driven business models, there can be a close link between data protection law and competition law, says Andreas Mundt, President of the

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### Future PL&B Events

- *Balancing privacy with biometric techniques used in a commercial context*, 29 January 2020, Macquarie Group, London. Speakers include Onfido on its use of biometric data and its experience of the ICO's sandbox.
- *Germany's data protection law: Trends, opportunities and conflicts*, 11 March 2020, Covington & Burling, London
- *PL&B's 33rd Annual International Conference*, St. John's College, Cambridge 29 June to 1 July 2020.

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# Albania updates its data protection framework

Host country to the DPAs' international conference 2019, and striving to become an EU member, Albania looks into adopting GDPR requirements. By **Laura Linkomies**.

**A**lbania's data protection law, applicable both to the private and public sectors, dates back to 2008. Amendments are now being prepared to introduce GDPR-style provisions.

Albania is a member of the Council of Europe, and has ratified the Council of Europe Convention 108, which entered into force in Albania on 1st June 2005<sup>1</sup>. "As regards the ratification of Convention 108+, we are ultimately committed to making all possible efforts in this respect," Besnik Dervishi, Albania's Information and Data Protection Commissioner told *PL&B* in an interview.

"Both Convention 108+ and the EU General Data Protection Regulation (GDPR) are key aspects in the short-term strategy of the Commissioner's activity." Albania has applied for technical assistance with the European Commission's Instrument for Pre-Accession Assistance (IPA), in order to receive assistance to draft or amend the current law, and to integrate all the innovations contained in the GDPR. We have anticipated, in our National Plan for European Integration, the adoption of the new aligned law in 2020; hence we expect to complete the process in the next couple of months, Dervishi said.

few. In relation to some of these new principles, we have attempted to address them by introducing by-laws adopted by the Commissioner."

For example, to level the playing field for data controllers which are subsidiaries to international companies, and already applying the GDPR, Albania has partially implemented the data breach notification provision.

## AWARENESS RAISING A PRIORITY

The Commissioner's Office is responsible for enforcing both data protection and freedom of information laws. Last year, the Commissioner's Office celebrated its 10th anniversary. "Over the first years of its activity, the authority strived to establish itself and raise awareness regarding the activity of the Commissioner's Office; hence the number of complaints received was quite limited, ranging from 25-36 complaints per year. As of 2014, our awareness efforts have increased significantly, and as a result, a tenfold increase in the number of complaints has occurred", Dervishi said. "It is worth noting that the figures relating to complaints should be understood as complaints handled at the procedural level, as opposed to the very high number of different requests for legal assistance or other types of requests by data subjects

the 'Education and Public Awareness' category. We organise campaigns targeting elementary and secondary schools, as well as large parts of private and public universities. Alongside the education sector, we've carried out campaigns in the healthcare sector, as it is another sensitive area requiring enhanced awareness. This campaign was quite broad and it was ultimately finalized with training for all public and private controllers operating in the domain. Beside these areas, our focus has been the financial sector, as well as telecommunications and insurance companies. In addition to building on our close co-operation with various justice sector stakeholders, we have conducted joint awareness activities with the National Chamber of Notaries, the National Chamber of Advocacy, and the National Chamber of Mediators. So we have sought to include all the key sectors within our awareness efforts."

In October, the office organised the International Data Protection Commissioners' Conference in Albania. Commissioner Dervishi told *PL&B* that the Conference was a landmark event for Tirana, not only in terms of size and scale, but also as regards its content, ultimately attracting attention from all over the country, with press and media being particularly interested in this event. Some 36 representatives from international media followed the conference, and many local ones too such as *Albanian Daily News* which is among the only press outlets in Albania providing daily news translated into English, and Scan TV, a television station based in Albania, specialising in economic and financial news.

"The 41st ICDPPC Closed and Open Sessions welcome speeches were broadcast live by all the major TV channels in Albania, including the keynote addresses of some of our prominent speakers, most notably the presentation delivered by Microsoft's

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We have anticipated, in our National Plan for European Integration, the adoption of the new aligned law in 2020.

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Albania's data protection law has followed the EU Data Protection Directive 95/46 since 2012. "We have since identified the novelties introduced by the GDPR, such as the right to be forgotten, data breach notification, territorial scope and its outreach to third countries with respect to European data subjects, just to mention a

or data controllers that the office processes in the course of the year."

"Public awareness campaigns are among our key priorities. We have conducted several successful campaigns that have been widely recognized. Last year, at the 40th International Conference of Data Protection and Privacy Commissioners, we were the winner of

Brad Smith, which attracted a lot of interest. News reports were also published during the conference week in several newspapers.”

#### ENFORCEMENT

“I believe that no data protection authority’s end purpose is to impose sanctions, and building on this, we strive to find a solution acceptable for the parties within the requirements of the law. The Commissioner has the power to seek information from data controllers, and they are required to comply in a timely manner and provide all the requested information. The Commissioner also has other legal instruments at his disposal, such as blocking the unlawful processing of personal data, or imposing administrative sanctions, which vary from 10,000 Albanian lek up to two million lek (up to €16,000). The Commissioner may also issue recommendations when he does not identify a violation, or encounters minor infractions which are not subject to administrative sanctions. Controllers must, however, observe these recommendations and report to the Commissioner about their implementation.”

Administrative investigations totalled 190 in 2018. So far this year, 126 have been launched. The administrative process is triggered and concluded by the Office of the Commissioner with the decision made by the Commissioner. The decision-making of the Commissioner is subject to a judicial review, and the competent court is the Administrative Court which reviews the actions taken by the Commissioner if challenged by the parties, Dervishi said.

The Commission performs sector-specific inspections especially in the education sector, healthcare, banking, telecommunications, and issues sanctions and sector-wide recommendations based on these audits. “For example, following the administrative inspections that we have conducted with the banking sector, we issued a recommendation for this sector.”

The Commission has so far issued guidance for the banking sector, health-care system, education, CCTV, etc. Speaking about the work programme for Albania’s Data Protection Commission for 2019-2020, Dervishi said that

in 2019 the ICDPPC was amongst the key priorities. Now many post-event tasks follow.

“As far as the other priorities in our 2019-2020 work programme are concerned, they are ratification of Convention 108+ and the transposition of the GDPR into our legislation and practices.”

#### EU MEMBERSHIP APPLICATION POSTPONED SO FAR

In October, the EU Council of Ministers decided not to start negotiations with Albania about Albania’s accession to the EU.

“I am obviously not entitled to provide a political view. Nevertheless, I would like to state that this is certainly not good news. The opening of negotiations with the EU would definitely have a positive impact on the activity of all the institutions in Albania, including the Commissioner’s Office, as our work is closely tied with international developments, particularly with regard to the global convergence of data protection and privacy rights. We have close relations with the Data Protection Unit of the European Union, and our office is a permanent observer to the European Data Protection Board. Based on the ambitious plan made in 2016-2017 that Albania would ideally accede to the EU by 2025, we had discussions with the EU Data Protection Unit on a possible adequacy decision for our country. Following negotiations with the EU Data Protection Unit, we submitted a full and extensive report.”

“The EU’s decision to not open negotiations compels us to rethink our position and probably to contact the EU Data Protection Unit again, in order to prevent this handicap from hindering the activity of our institutions, specifically *vis-à-vis* local and foreign data controllers and processors. It is also important to stress that the Commissioner’s Office is strongly engaged in the European integration process of our country, partaking in Chapter 23 of the country’s annual progress report “Judiciary and Fundamental Rights”, as well as Chapter 24 “Justice, Freedom and Security” and Chapter 10 “Information Society and Media”, the latter regarding the interplay between the information society

and the protection of personal data, and the access or re-use of public sector documents. Moreover, in our capacity as the national data protection regulatory body, we are regularly consulted on legislative proposals or other data protection aspects by national institutions involved in the integration process.”

#### INTERNATIONAL COOPERATION

Albania’s main references, when drafting, implementing and modernising the Albanian data protection law have been Convention 108 and the EU GDPR. Albania has close co-operation in place with several counterparts formalised through co-operation memoranda, the latest having been signed with the Italian Data Protection Authority (*Garante*). “I consider it successful in terms of exchange of know-how, information and joint handling of cases,” Dervishi said.

“The Commissioner’s Office is closely involved in international data protection co-operation networks. To date, there is not a Balkan group of data protection authorities. However, we have close ties of partnership and collaboration especially with the Western Balkans authorities of Montenegro, North Macedonia, Kosovo, and Bosnia and Herzegovina not excluding the fruitful cooperation we have with Italy, Croatia, Slovenia, and Greece.”

#### INFORMATION

See [www.idp.al/?lang=en](http://www.idp.al/?lang=en) and [www.idp.al/annual-reports/?lang=en](http://www.idp.al/annual-reports/?lang=en)

#### REFERENCE

- 1 [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108/signatures?p\\_auth=cW4vw16P](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108/signatures?p_auth=cW4vw16P)