



R E P U B L I C O F A L B A N I A
RIGHT TO INFORMATION AND PERSONAL DATA PROTECTION
COMMISSIONER

GUIDELINE

No.04, dated 30.04.2025

ON

PERSONAL DATA PROTECTION AND APPROPRIATE SECURITY
MEASURES IN DIRECT MARKETING

Pursuant to article 82, paragraph 1, letter “d”, article 85, paragraph 1, and article 97, paragraph 2, of Law no. 124/2024 “On Protection of Personal Data” (hereinafter referred to as “the Law”), the Information and Data Protection Commissioner, hereby issues the following

GUIDELINE:

Article 1

Definitions

1. “Direct marketing” is the form of communication with directly identifiable persons, with the aim of promoting goods or services, including advertising the membership in organizations, solicitation of donations, as well as direct marketing activities, which include any preparatory act by the advertiser or a third party to enable this communication.
2. Other terms used in this Guideline have the same meaning as in the Law.

Article 2

Purpose

1. This Guideline aims to determine the rules to be followed by controllers or processors¹ of personal data, who carry out direct marketing in the course of their activity.
2. Controllers who collect and process personal data for direct marketing purposes must comply with all obligations provided for in the Law.

¹ The processing is carried out by controllers/processors as part of their activity or as processing in view of the primary scope of activity (*such as the case of a call center*).

3. The Guideline addresses the rules on which the processing of personal data for direct marketing purposes must be carried out, the manner in which information must be made available to data subjects, restrictions on further processing, processing of children's data for marketing purposes (*as a special category*), appropriate security measures and the obligation of controllers to facilitate the exercise of the rights of the personal data subjects.

Article 3

Obligations in relation to processing of personal data

1. The controller collects data for its own marketing purposes, if it needs it to meet its legitimate interests², except in cases where the right to the personal data protection takes precedence over them. In this case, the controller must ensure that the data subject's consent is obtained.

2. In cases where sensitive data³ are collected, the controller must be able to demonstrate that the data subject has given his/her express and specific consent, except where applicable law prohibits the processing of such data even with his/her consent.

3. The same condition applies where the controller processes the interest profiles of data subjects containing sensitive or criminal data, in order to send “personalised” marketing messages, which are adapted to the presumed interest profile of the data subject.

4. The controller shall obtain the consent of the data subject where it obtains data from customer files of third parties, further processing the information on whether a natural person, identified by name, gender, age group and address, has been a customer of the third party.

5. Where the controller collects data which are not of a sensitive or criminal nature for the purposes of direct marketing of third parties, this may be based on legitimate interest insofar as the data are collected:

- a) from the data subject - after full information on possible data transfers;
- b) from sources which are accessible to the public in accordance with the law, or
- c) from customer files of third parties, provided that:
 - i. these data do not go beyond the information that a natural person, identified by name, gender, age group and address, has been a customer of the third party, and that
 - ii. the third party has informed the data subject, at the time of data collection, that the data may be used for direct marketing purposes of other controllers and that the data subject has not objected, but may do so at any time.

6. In all other cases, the collection of data for direct marketing purposes by third parties requires the consent of the data subject.

² Article 7, paragraph 1, letter “dh” of Law no.124/2024 “*On Personal Data Protection*”.

³ Provided for by Article 9 of Law no. 124/2024 “*On Personal Data Protection*”.

Article 4

Obligation in relation to informing the data subjects

1. The controller shall inform data subjects pursuant to article 13 of the Law in cases where:

a) the data are collected from the personal data subject himself⁴, the controller shall provide information (except in cases where the data subject possesses this information) regarding:

- i. the identity of the controller;
- ii. the fact that the processing is carried out for direct marketing purposes and that the data subject is in no way obliged to provide these data;
- iii. the legal basis on which the controller relied for collecting the data;
- iv. whether the data will be transferred to third parties and, if so, the identity of the recipients and the purpose and legal basis of the transfer;
- v. the rights of data subjects⁵, in particular the right to object to the processing of data for direct marketing purposes. In such a case, the controller shall not further use the data for marketing purposes.

In cases where the controller derives interest profiles of data subjects from data collected for marketing purposes, the data subject must also be informed of this data processing.

The above-mentioned information must be provided at the time of data collection, so that the personal data subject is fully aware of the risks of making his/her data available.

b) In cases where the data has been collected from other sources other than the personal data subject⁶, information must be provided for:

- i. all categories specified in letter “a”.
- ii. the source(s) from which the data were collected. Except where the data subject carries this information or providing the information is impossible or constitutes an unreasonable effort and the controller has taken appropriate measures to protect the data subject’s rights and legitimate interests.

2. The information referred to in the above paragraphs must be provided:

- a) at the time of the first communication with the data subject, in the case where the controller has collected the data explicitly in order to convey a marketing message to the data subject;
- b) in all other cases no later than one month after receiving the data;

⁴ For example, in the case where the subject is subjected to an interview or fills out a questionnaire.

⁵ According to articles 13-20, of Law no. 124/2024 “*On Personal Data Protection*”.

⁶ For example, in the case where the data are obtained from sources that are accessible to the public according to law or from third parties authorized by the subject for this purpose.

- c) if the data are to be transferred to a third party, the data subject must be informed, at least at the time when the personal data are transferred for the first time.

Article 5

Data processing for another purpose (“further processing”)

1. In the case where data is collected for direct marketing purposes, they shall not be processed for any other purpose, except in the following cases where:
 - a) this purpose is the use for direct marketing and
 - b) the data subject has been informed and has given consent to the further processing intended, before this process begins.
2. The concept of further processing, provided for in article 5, paragraph 17 of the Law, is a new processing purpose, which:
 - a) usually follows an activity that appears to be fair to that of the initial purpose of the processing, approximate (according to the appropriate time and context). This further processing must be foreseeable by the personal data subject, as a new purpose following the initial one, and
 - b) does not present significant additional risks for the data subject or where such risks have been successfully mitigated and additional safeguards have been taken for the rights and interests of the personal data subject.

Article 6

Processing of minors’ personal data

1. In the context personal data protection, an individual under the age of 18 shall be considered a “*minor*” and shall enjoy special protection.
2. Where controllers collect data on minors for direct marketing purposes, they shall pay particular attention to the principle of data minimization, so that personal data are not processed more than is necessary for the purpose without prejudice to the specific nature of this category of subjects.
3. Where consent is required for the collection of data for marketing purposes, it shall be obtained from the minor’s parent or legal custodian. The controller shall verify that the minor’s parent or legal custodian is the person representing the minor.
4. The necessary information shall be made available to the minor, as well as to his or her parent or legal custodian. The information made available to minors must be appropriate for this category of subjects and be easily visible, legible and understandable.
5. Marketing materials and messages addressed to minors must be appropriate in order to be easily visible, legible and understandable and not to affect the sensitive personal nature of minors.

6. The parent or legal custodian of the minor, as his legal representative, enjoys the same rights as the minor, in the role of the personal data subject.

7. In the case where the controller collects the data of a minor, for the purpose of participating in a game, offering a prize or any other action that requires the dissemination of the minor's data, the controller will limit the processing of the data strictly to the extent necessary, in order for the minor to participate in this activity.

Article 7

Security measures

1. Controllers shall implement appropriate security measures, taking into account the state of the art in security technology and the costs, the manner of implementation and the sensitivity of the data collected, to prevent any accidental loss or destruction, accidental disclosure or unauthorised access to personal data processed for direct marketing purposes.

2. These measures shall include, inter alia, the security of the premises in which the personal data are processed (*including the entrances to the premises*), the list of persons authorised to access the data, appropriate mechanisms, security measures for the transfer of data between the controller and the data processor, etc.

3. Controllers shall ensure that any processor they contract guarantees an appropriate level of security measures. The controller shall be liable to data subjects for the activities of the processor in accordance with the provisions of the act governing the relationship between them.

Article 8

Duty to facilitate the exercise of the rights by data subjects

1. Data subjects shall enjoy the rights provided for in articles 13-20 of the Law.

2. The controller shall take measures to handle requests in implementation of the rights of data subjects by responding within 30 days of their receipt.

3. Data subjects shall, in particular, have the right to obtain from the controller:

- a) whether he is processing data concerning him and,
- b) if he is processing data concerning him, to specify the categories of data (*including their content*) which are being processed and for what purpose.

4. Where data are processed for direct marketing purposes, the data subject shall have the unconditional right to object to the processing of his/her data, with the legal effect that the controller shall immediately cease processing such data for direct marketing purposes.

Article 9

Final provisions

1. All public and private controllers/processors in the territory of the Republic of Albania are responsible for respecting and implementing this Guideline.

2. Failure to comply with the requirements of this Guideline constitutes a violation of the Law and is punishable, as per article 94 thereof.

3. Guideline no. 6, dated 28.05.2010 “*On the Correct use of SMS for Promotional Purposes, Advertising, Information, Direct Sales via Mobile Telephony*” and Guideline no. 16, dated 26.12.2011 “*On Personal Data Protection in Direct Marketing and Security Measures*”, shall be repealed.

This Guideline shall enter into force after publication in the Official Gazette.

COMMISSIONER

Besnik Dervishi