

BOGA & ASSOCIATES NEWSLETTER

To keep you up-to-date with the latest legal and economic developments, this newsletter prepared by our Team provides information that may affect the operation of your business in Albania.

Proposed amendments to the Law on Protection of Personal Data and Law on the Right to Information



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Proposed amendments to the Law on Protection of Personal Data and Law on the Right to Information

On 16.12.2021 the Office of the Information and Data Protection Commissioner (the Commissioner) published a notice for public consultation on proposed amendments to the Law no. 119/2014 “On the Right to Information” and Law no. 9887/2008 “On Protection of Personal Data”.

Protection of Personal Data

The draft law is a result of the latest technological developments and Albania's integration process into the EU. This legal reform aims at fully aligning domestic legislation with the Regulation (EU) 2016/679 (GDPR) and constitutes an important step in strengthening citizens' fundamental rights in the digital age.

It expands the scope of current legal provisions by introducing a set of detailed rules to ensure stronger enforcement and new concepts such as: profiling, pseudonymization, genetic or biometric data, etc.

The draft law proposes the following key novelties:

- Easier access to personal data and right to portability;
- Right to erasure (“*right to be forgotten*”);
- Data protection by design and by default;
- Mandatory breach notifications;
- Documentation and Data Protection Impact Assessment (DPIA);
- Certification

Easier access to personal data and right to portability

The draft law provides a rich legal framework in terms of information that data subjects can obtain on how their data is processed. Data subjects are entitled to receive from the data controller the result of the processing of the provided data. With regards to the right to portability, data subjects are allowed to request from a data controller to transmit the processing result, directly to another controller.

In this way, it will be easier for individuals to transmit personal data among service providers.

Right to erasure (“right to be forgotten”)

Provided that there are no legitimate grounds to retain personal data, data subjects are entitled to request from the data controller to:

- Erase/remove their personal data;
- Stop any further processing of their personal data;
- Potentially stop third parties from processing their personal data.

This principle aims at protecting the privacy of individuals and does not restrict the freedom of the press or erasing past events.

Data protection by design and by default

This concept is related to the technical and organizational measures that must be implemented in the initial stages of providing a product or service. Data protection safeguards should be built into products and services from the earliest stage of the design of the processing operations, and privacy-friendly default settings should be the new norm. By default, entities should ensure that personal data are processed with the highest protection so that such data are not made accessible to an indefinite number of persons.

Mandatory breach notifications

The draft law specifies that an entity must report to the Commissioner a security breach that affects personal data, without undue delay, and at the latest within 72 hours after having become aware of the breach. A security breach may be an incident that causes accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data.

If the data breach poses a high risk to the affected data subjects, then they must all also be informed, unless there are effective protection measures

ensuring that the risk is no longer likely to materialize.

Documentation and Data Protection Impact Assessment (DPIA)

The draft law establishes the obligation of data controllers or data processors to keep the necessary documentation and data related to the processing activity.

In addition, data controllers are, among other things, obliged to perform a Data Protection Impact Assessment (DPIA) prior to performing a data processing. This is especially necessary when new technologies are used, or, given the nature, scope, context and purposes of the processing, a personal data processing is likely to constitute a hazard to the rights and freedoms of persons.

Certification

Certification is a demonstration by entities of their compliance with the data protection principles by way of data protection seals and marks. Being certificated shall demonstrate to the public that the relevant processing operation or all processing operations of a controller or processor have successfully passed the certification process. The criteria for obtaining a certificate are set out in the guidelines of the Commissioner.

The Right to Information

The amendments aim at increasing the transparency and accountability of the public sector bodies, as well as strengthening the rules and procedures provided in the current legislation.

The draft law provides in detail for the competencies of the Commissioner with regards to the right to information, which are related to monitoring and supervising the implementation of this law. In this context, the activity of the Commissioner will be supported by an Advisory Board and will focus on:

- Examination of complaints and conducting necessary administrative inspections;

- Imposition of administrative sanctions pursuant to the provisions of the law;
- Providing recommendations or training courses to public sector bodies on the proper implementation of the right to information in practice.

In order to guarantee transparency, the draft law anticipates that the decisions of the Commissioner will be open to the public and thus be published on the website of the institution.

The draft law stipulates that if the right to information is restricted pursuant to the conditions provided by law, public sector bodies must notify in advance the rightholder for the dissemination of this information.

Other changes are related to the indexation of penalties that will be imposed on entities, should they not follow the procedures and requirements defined by the law.

During the procedure for examining complaints, the Commissioner may, as far as it deems reasonable, conduct inspections with the relevant public sector body and / or hold a public hearing with the participation of the parties. Further, the draft law stipulates that the decision of the Commissioner, issued at the end of this procedure, will constitute an executive title, in accordance with the provisions of the Code of Civil Procedure.

The public sector body or the Commissioner have the right to refuse to act if the requests or complaints are unfounded, excessive or of a repetitive nature. In this case, the decision of the Commissioner can be appealed before the administrative court within 30 days of becoming aware of this fact.

Finally, the law anticipates the obligation of cooperation among public sector bodies and the Commissioner, which includes providing the necessary information for the fulfillment of duties and reporting on the implementation of the requirements of this law.



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The Legal 500 2021: Top Ranked in Legal Market Overview

Benchmark Litigation Europe 2022: Top Ranked in Dispute Resolution

WTR1000 2021: Top Ranked in Trademarks

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Boga & Associates

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