

Legal Update

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Muja Law brings you the latest issue of the *Legal Update*.

Recently in the Official Journal No.9, dated 17.01.2025, among other, has been published Law No. 124, dated 19.12.2024 “*On personal data protection*” (hereinafter referred to as “*the law*”).

The law aims to strengthen individual privacy rights and enhance data security measures for organizations. The law also provides more detailed guidelines for the lawful processing of personal data, particularly in relation to sensitive information.

Furthermore, the law enhances the powers of the data protection authority. Penalties for non-compliance have been significantly increased to align with European standards. This comprehensive update of the law aims to bring Albania's data protection framework in line with European standards and reflects the growing importance of data privacy in the digital age.

Some of the most important provisions of the Law are as follows:

❖ The Law

The law applies when personal data are processed in whole or in part by automatic means, as well as to the processing of personal data that are part of a filing system or are intended to become part of a filing system when the processing is not carried out by automatic means.

The law does not apply to the processing of personal data by natural persons for personal or family purposes.

Territorial scope

The law applies to the processing of personal data:

- a) in the context of the activities of a controller or processor established in the Republic of Albania, regardless of whether the processing takes place in the Republic of Albania or not;
- b) of data subjects, who are located in the Republic of Albania, by a controller who is not established in the Republic of Albania, but the

processing operations relate to:

- i. the offering of goods or services, whether for consideration or not, to data subjects in the Republic of Albania; or
 - ii. the monitoring of the behavior of data subjects, as long as such behavior takes place in the Republic of Albania;
- c) by a controller or processor, who is not established in the Republic of Albania, but in a territory where Albanian law applies on the basis of public international law.

Novelties of the law

- The right to information is improved by guaranteeing that the information requested by the data subject is provided by the controller in a concise, transparent, understandable and easily accessible form, especially when the information is addressed to children;
- The right of access enjoyed by the data subject now guarantees the possibility to obtain from the controller a wider category of information, if their personal data are being processed;
- The right to request the restriction of processing is detailed by specifying possible reasons of the data subject to request their blocking;
- The “right to be forgotten” is introduced for the first time, which can be considered as a new right of the data subject in the context of technological developments. This right serves as a guarantee in the online environment for the data subject, by obliging search engine providers to delete, at the request of the data subject, information relating to them which, over time, is no longer necessary but, when found, has a negative impact on their reputation. The aim of this right is to eliminate any trace of the data of any person who wishes to be “forgotten” forever by social networks and internet search engines or other search platforms.

- The “right to data portability” is guaranteed for the first time, which aims to offer the data subject the possibility to easily move, copy or transmit personal data from one controller to another for certain purposes.



New obligations for controllers and processors

Some of the new obligations for controllers and processors, provided in the law, are as follows:

- Obligation to carry out an impact assessment on the protection of personal data before the start of a processing operation, in order to identify the potential risks to the rights and freedoms of the data subject and to minimize them as soon as possible, if it turns out that this processing poses a high risk;
- Obligation to consult in advance with the Commissioner before the start of data processing, in case this processing results in a high risk for the data subject;
- Obligation to notify the Commissioner in the event of a personal data breach, as well as data subjects when the risks caused by the data breach are likely to be high;
- The law introduces the concept of data protection by design and by default, and encourages controllers and processors to use such technologies;

- In virtue of the law, public and private sector bodies are required to appoint a data protection officer, in order to guarantee the compliance of the organization to which it belongs with the requirements of the law on the protection of personal data during the data processing they carry out in the context of exercising their activity.



The law provides that the personal data protection officer shall have the following duties:

- a) provide advice, where requested, to the management bodies of the controller or processor on all matters relating to data protection;
- b) participate in impact assessment activities;
- c) inform and advise the staff of the controller or processor on data protection, including awareness-raising and training of staff involved in processing operations;
- ç) monitor compliance of the law with other provisions in force on the protection of personal data and with the policies of the controller or processor regarding the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations and relevant audits;
- d) cooperate with and serve as a contact point for the Commissioner;
- dh) in the exercise of their duties and based on the nature, object, circumstances and

purposes of the processing, pay due attention to the risk of infringement of fundamental rights and freedoms that may be caused by the processing of personal data.

- The drafting of codes of conduct for certain categories of controllers and processors, which aim to contribute to the best possible implementation of the law on the protection of personal data by the latter;
- Accredited monitoring bodies, whose mission is to monitor the compliance or non-compliance of controllers and processors with the code of conduct, in case the latter have undertaken to adhere to it;
- Establishing a certification mechanism, as an instrument, which demonstrates that a processing process is in compliance with the legal framework for the protection of personal data and that during the data processing process there are sufficient guarantees for their security.

Principles and criteria of processing

The principles and criteria for the processing of personal data, although remaining the same, are described in more detail:

- The criteria for the granting and validity of the data subject's consent are strengthened, as well as the practical aspects related to the consent of children or consent by electronic means are addressed;
- The "principle of accountability" of controllers and processors in the process of processing personal data is explicitly integrated, who must now be able to demonstrate compliance with the requirements of the legislation on the protection of personal data.

Sensitive personal data

The category of "sensitive" personal data is updated with added "genetic data", "biometric data", "data on sexual orientation" and at the

same time the obligation of controllers and processors to guarantee appropriate safeguards, in order to process them lawfully, is presented as an essential condition.

Processing of personal data for specific purposes

The processing of personal data for specific purposes is regulated in a much more comprehensive and detailed manner, while new provisions are added in this context related to:

- The processing of personal data and the right of access to public sector information, in order to guarantee a balance between these two fundamental rights;
- The processing of personal data for direct marketing purposes, where new rules and instruments are introduced for the protection of the interests of data subjects in the context of exercising this activity.

International Transfer

For the first time, cases for allowing the transfer of personal data without the Commissioner's authorization to countries with an insufficient level of data protection are integrated, introducing in this context new instruments that guarantee appropriate safeguards for fundamental rights and freedoms such as: "Standard Data Protection Clauses" and "Binding Rules of the Group of Commercial Companies", which serve as a mechanism for providing appropriate guarantees for data transfers.

Sanctions

The law provides increased administrative sanctions, with the aim of compliance with the GDPR. This is a clear indication of the importance of the protection of personal data and the implementation of the obligations arising from the legal framework in this field.

Fines range up to 1,000,000,000 (one billion) lekë, or in the case of a commercial company up to 2% of the total annual global turnover for the preceding financial year, whichever is higher.



Processing of personal data and freedom of expression

The law provides that in order to reconcile the right to the protection of personal data with the freedom of expression and information, including the processing of personal data for journalistic purposes and for academic, artistic and literary purposes, exceptions to the provisions of this law may be applied, to the extent necessary and proportionate, provided that:

- a) the controller has the aim of publishing journalistic, academic, literary or artistic materials, for the preparation of which the personal data are necessary;
- b) the controller does not process the personal data for any purpose other than those provided for above;
- c) the publication of the material in a specific case is in the public interest;
- ç) the application of the provisions of this law may render impossible or seriously jeopardize the achievement of the controller's aim;
- d) the essence of the fundamental rights and freedoms of the data subjects is not affected.

When publishing journalistic, academic, literary or artistic material prepared in

compliance with the above, the controller shall not publish information on the basis of which, directly or indirectly, the following can be identified:

- a) a minor, except in cases where:
 - i. the consent of the minor's parent or legal guardian has been obtained; or
 - ii. permission from the court;
- b) the victim or the person who claims to have been harmed by the commission of a criminal offence, except in cases where:
 - i. the consent of the victim or the person who claims to have been harmed by the commission of a criminal offence has been obtained;
 - ii. permission from the court has been obtained; or
 - iii. the victim is a public figure and the act that makes him a victim is related to his public function.

data will be stored or, where that is not possible, the criteria used to determine such period;

d) legal basis for the processing;

dh) categories of personal data in question, including, where the personal data have not been collected from the data subject, any available information on the source of such data;

e) recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular recipients in foreign countries or international organizations, including where the data are transferred to foreign countries and, if so, how appropriate protection is ensured;

f) the existence of rights under this law and the right to file a complaint with the Commissioner.

Entry into force

The law enters into force 15 (fifteen) days after its publication in the Official Journal.

The law also provides some exceptions in relation to various articles of the law which enter into force 2 (two) years after the publication of the law in the Official Journal.



Right to access

The law provides that the data subject shall have the right to obtain from the controller, no later than 30 (thirty) days from the date of submission of the request, confirmation as to whether or not personal data concerning him or her are being processed, and, where applicable, access to the personal data and the following information:

- a) the purpose of the processing;
- b) the existence and logic of automated decision-making and profiling, and appropriate information regarding the logic involved and the significance and envisaged consequences of such processing for the data subject;
- c) the envisaged period for which the personal



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Muja Law is a family-run law office where we work hard for the success of our clients and to provide excellence in legal service. Our roots go back to 2001 when our Managing Partner, Krenare Muja (Sheqeraku), opened her law practice office in Tirana, Albania. Krenare’s son Eno joined her in 2014, and the other son Adi entered the practice in 2019. What started in Tirana as a small, family-run law office has grown and flourished in the community for the last 20 years. The office consists of various respected and talented lawyers who possess outstanding educational and community service backgrounds and have a wealth of experience in representing a diverse client base in various areas of the law.

The office is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The office delivers services to clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. In our law office, we also like to help our clients with mediation services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania’s leading law offices, we are grounded in the essence of “who” we are and “where” we started. We understand the importance of family, hard-work, and dedication.

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