

## Legal Update

May 2025 / Issue 2



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

Recently the Commissioner for the Right to Information and Protection of Personal Data has approved Instruction no. 3, dated 30.4.2025 “*Processing of personal data from video surveillance systems*” (hereinafter referred to as the “*Instruction No.3*”) and Instruction no. 4, dated 30.4.2025 “*On the protection of personal data and the necessary security measures in direct marketing*” (hereinafter referred to as “*Instruction No.4*”).

Both of these acts have been recently published in the Official Journal No.75, dated 02.05.2025.

*Some of the most important provisions of the above-mentioned instructions are as follows:*

### ❖ Instruction No. 3

Instruction No.3 provides that the data stored in the video surveillance system, such as images or sounds (hereinafter referred to as “*CCTV system*”), are considered as personal data, provided that an individual can be identified directly or indirectly based on these recordings.

An individual is identifiable if the image or sound recorded in these systems reveals distinctive characteristics of him/her, such as: *face, physical features, voice data, etc.*, making possible for a full identification when compared with other available data.

#### Prerequisites for lawful camera surveillance

In virtue of Instruction No.3, the processing of personal data through a CCTV system constitutes a serious interference with an

individual's private life. The controller may process this data *only when it is allowed* as per the provisions of law on personal data protection.

The Instruction further provides that the data controller must ensure that the *data subject's consent is obtained*, however, in practice this is only possible in very limited cases, when the identification of a group of people within the camera's area is clearly made.

In most cases, the controller cannot identify in advance the individuals who will pass through the monitored area, in order to secure their "consent" beforehand. In this case, the Controller is entitled to install CCTV systems if this processing is *necessary for the fulfillment of a legal obligation or its legitimate interests. In any case, it must guarantee that there is no other less intrusive way into the data subjects' lives for the fulfillment of the purpose.*



### Legitimate interest

In virtue of Instruction No.3, legitimate interest in the operation of a CCTV system implies that:

- a) the controller has the right to decide who is allowed to enter and stay within the monitored area (*the right to the premises*);
- b) the use of a CCTV system must be justified by a specific need to protect the rights of the controller or third parties, such as the risk of theft or threat to the physical or mental safety of persons staying within the monitored area;
- c) the purpose of the recording must be clearly specified and in accordance with the legitimate interests of the controller (*e.g., protection of property against theft*);
- d) the processing of data by means of a CCTV system may only be allowed if the purpose for which this system was installed cannot be achieved in any other way;
- e) the installation of a CCTV system is *prohibited in premises used exclusively for private purposes, such as: toilets, showers, changing rooms, etc.*

Further to the above, Instruction No.3 provides that since the processing of data is carried out for the fulfillment of the legitimate interests of the controller, it is essential that the interests of the data subjects are taken into account, so that

the data of the CCTV system are not accessible by unauthorized persons. Under these conditions:

- a) the data must be kept for as short a period as possible;
- b) the circle of persons who have access to the recorded data must be limited and be as narrow as possible;
- c) any access to the recorded data must be documented for the purposes of a possible subsequent audit. The data recorded for the prevention of risk, as the reason for the installation of the CCTV system, will not be used for other purposes, except in cases provided by law, e.g., for important public interests such as the fight against crime.

Additionally, before starting the processing of personal data through the CCTV system, in virtue of Instruction No.3, it must be documented, by an internal act of the decision-making body of the controller, the following:

- a) *the type, specifications of the cameras and their placement* in accordance with the purpose for which they will be used. The position of the cameras should not be in a way that images are obtained from environments that do not correspond to the purpose of the surveillance;
- b) the exact areas that will be under surveillance; e.g.: monitoring and recording images in private premises is prohibited;
- c) the surveillance and real-time transmission of images recorded by the CCTV system, via the internet or electronic communication services, where persons can be easily identified, is prohibited.

### Retention period

In virtue of the Instruction, the retention period of recorded data should not exceed the necessary period for the fulfillment of the

purpose for which this data was recorded.

In general, the data may be kept:

- a) for a period of 72 hours;
- b) for a longer period, if the controlled premises are not under continuous surveillance, however, no more than 30 days;
- c) for longer periods when provided for by a special normative/regulatory act.

*After the expiration of the lawful retention period of the recordings, the controller must take measures to delete this data.* In the event of a security incident, the data of the CCTV system must be made available to the competent authorities within the meaning of the law.

### Camera surveillance in residential buildings

In virtue of the Instruction, CCTV systems can be installed in residential buildings *only with the approval of at least 75% of the residents*, in accordance with the legislation in force for the administration of co-ownership in residential buildings.

*Surveillance and recording of images or sound by CCTV systems in the common areas of apartment buildings is allowed only for the purpose of protecting the safety of people and property. It is prohibited to make available to third parties images of residents and their activities, recorded in the common residential areas by means of the CCTV system, except when this is requested by the competent authorities.*

The controller is obliged to place in the camera-monitored premises the standard model of the information sign for surveillance with the CCTV system, approved by the Commissioner.



### Security measures

Instruction No.3 provides that security measures must protect recording systems and transmission equipment that store recorded data, ensuring that there is no unauthorized or accidental access, alteration, destruction, loss, or processing.

Personal data must be kept secure and not misused or compromised by unauthorized persons. Security is not only related to physical security measures, but also concerns the organization of work in such a way as to minimize risk, for example, by ensuring that staff have access to personal data only to the extent necessary to perform their work activities.

*Every employee must be regularly trained on the secure use of personal data and clearly understand their responsibilities and limitations, in accordance with the requirements of the law.*

Controllers, processors, and authorized persons who, in the course of their duties, become aware of the content of data recorded by the CCTV system, are obliged to maintain confidentiality even after the termination of their work for the controller or processor.

### Rights of data subjects

Data subjects must be clearly informed about

the existence and purpose of a CCTV system by placing *a notice in the monitored area*. Exceptions are acceptable only when provided for by specific legislation.

In virtue of the Instruction No.3, if a data subject requests access to their video surveillance data, this data cannot be deleted by the controller after receiving this request. In case the granting of access will be fulfilled by showing the data subject the recorded material, the *data protection interests of third parties must be taken into account*, making it possible to anonymize the video by obscuring their image.

#### Entry into force

*Instruction No.3 enters into force after its publication in the Official Journal.*



#### ❖ Instruction No. 4

Instruction No.4 provides that “*Direct marketing*” is the form of communication with directly identifiable persons for the purpose of promoting goods or services, including advertising membership in organizations, soliciting donations, as well as direct marketing activities that include any preparatory act by the advertiser or by a third party to enable this communication.

Instruction No.4 aims to define the rules to be followed by controllers or processors of

personal data who, during their activity, carry out direct marketing.

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

#### Obligations related to the processing of personal data

In virtue of Instruction No.4, the controller collects data for its marketing purposes if it needs them to fulfill its legitimate interests, except where the rights to the protection of personal data take precedence. *In this case, the controller must ensure obtaining the consent of the data subject.*

In cases where sensitive data are collected, the controller must be able to demonstrate that the data subject has given his/her explicit consent in a clear and specific manner, except when the legislation in force prohibits the processing of this data even with his/her consent.

The same condition is valid when the controller processes the interest profiles of data subjects containing sensitive or criminal data, for the purpose of sending "personalized" marketing messages, which are adapted to the presumed interest profile of the data subject.

*The controller must obtain the consent of the data subject if it obtains data from the customer files of third parties, further processing the information if a natural person, identified by name, gender, age group and address, has been a client of the third party.*

In cases where the controller, for the direct marketing purposes of third parties, collects data that are not of a sensitive or criminal nature, this may be based on legitimate interest



insofar as the data are collected:

- a) from the data subject - after full information on possible transfers of data;
- b) from sources that can be accessed by the public according to the law; or
- c) from the customer files of third parties, provided that:
  - i. this data does not exceed the information that a natural person, identified by name, gender, age group and address, has been a client 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 the direct marketing purposes of other controllers and that the data subject has not objected but may do so at any time.

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

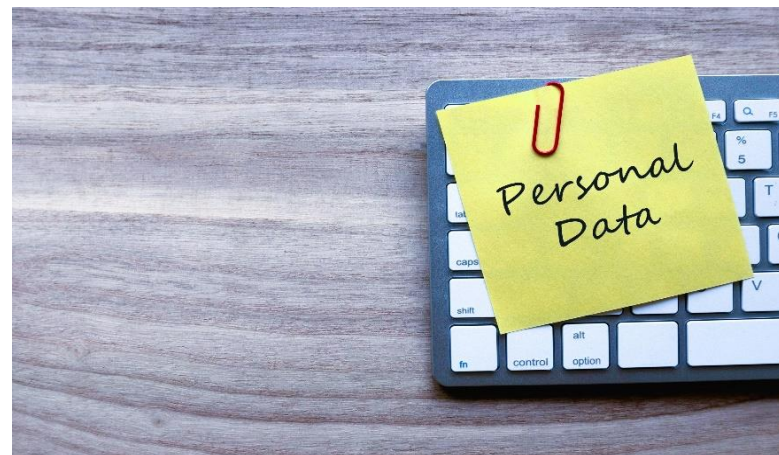
#### Obligations regarding the information of data subjects

The controller must inform data subjects, in cases where:

- a) the data are collected from the personal data subject themselves, the controller must provide information (*except where the data subject already 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 not in any way obliged to provide this data;
  - iii. the legal basis on which the controller has relied for the collection of data;
  - iv. if 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 subjects, in particular the right to object to the processing of

data for direct marketing purposes. In this case, the controller must no longer use the data for marketing purposes. In cases where the controller creates interest profiles of data subjects from the data it has collected for marketing purposes, the data subject must be informed also about this data processing. The aforementioned information must be provided at the time of data collection, in so that the personal data subject is fully aware of the risks of making their data available;

- b) in cases where the data have been collected from other sources and not from the personal data subject, the information must be provided for:
  - i. all categories specified above;
  - ii. the source(s) from which the data were collected. Except where the data subject possesses this information or the provision of information is impossible or involves a disproportionate effort and the controller has taken appropriate measures to protect the rights and legitimate interests of the data subject.



The information mentioned in the points above must be provided:

- a) at the time of the first communication with the data subject, in the event that the controller has collected the data clearly to send the data

subject a marketing message;

- b) in all other cases, no later than one month after obtaining the data;
- c) if the data will be transferred to a third party, the data subject must be informed at least at the moment when the personal data are transferred for the first time.

- b) does not present significant additional risks to the data subject or when risks such have been successfully mitigated and additional safeguards have been taken for the rights and interests of the personal data subject.



### Processing of data for another purpose (*"Further processing"*)

Instruction No.4 provides that in the event that the data have been collected for direct marketing purposes, they will not be processed for any other purpose, except in the following cases, when:

- a) this purpose is the use for direct marketing; and
- b) the data subject has been informed and has given consent for the processing of intended further processing, before this process begins.

The concept of further processing is provided for in the law, as a new processing purpose, which:

- a) usually follows an apparently fair activity with that of the initial processing purpose (*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

### Processing of personal data of minors

Instruction No.4 provides that within the framework of personal data protection, an individual under the age of 18 must be considered a "minor" and enjoys special protection.

In cases where controllers collect data on minors for direct marketing purposes, they must pay special attention to the principle of data minimization, so that personal data are not processed more than is necessary for the realization of the purpose without compromising the special nature of this category of subjects.

In cases where consent is required for the collection of data for marketing purposes, it must be *obtained from the parent or legal guardian of the minor*. The controller shall verify that the parent or legal guardian is the person representing the minor.

The necessary information must be made available to the minor, as well as to the parent or his legal guardian. The information made available to the minor must be appropriate for this category of subjects and be *easily visible, readable, and understandable*.

Marketing materials and messages addressed to minors must be appropriate so that they are easily visible, readable and understandable and do not compromise the delicate personal nature of minors.

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

In the event that 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 distribution of data of the minor, the controller will strictly limit the processing of data to the extent that is necessary for the minor to participate in this activity.

### Security measures

Instruction No.4 provides that controllers shall use appropriate security measures, taking into account developments in security technology and costs, the manner of implementation and the sensitivity of the data collected, to prevent any accidental loss or destruction, dissemination, or unauthorized access to personal data processed for marketing purposes direct.

These measures shall include, among other things, the security of buildings where personal data is processed (*including building entrances*), the list of persons authorized to have access to data, appropriate mechanisms, security measures for data transfer between the controller and the data processor, etc.

Controllers shall ensure that any processor they contract guarantees an adequate level of security measures. The controller is liable to data subjects for the activity of the processor, in relation to the provisions of the act governing the relationship between them.

### Obligations to facilitate the exercise of the rights of the data subject

Instruction No.4 provides that the controller must take measures to handle requests for the exercise of the rights of data subjects by *responding within 30 days of their receipt*.

Data subjects have, in particular, the right to obtain information from the controller:

- a) if it is processing data concerning them; and

- b) if it processes data concerning them, to specify the category of data (*including their content*) being processed and for what purpose.



In virtue of Instruction No.4, in the event that the data are processed for direct marketing purposes, the data subject has the unconditional right to object to the processing of their data, with the legal effect that the controller immediately stops the processing of this data for direct marketing purposes.

### Entry into force

*Instruction No.4 enters into force after its publication in the Official Journal.*



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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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