



Muja Law brings you the latest *Legal Update* regarding the measures against COVID-19.

Recently, the Commissioner's Office on Data Protection in Albania (herein referred to as the "*Commissioner's Office*") has issued a guideline for the processing of personal data in specific sectors in relation to the anti COVID-19 measures (herein referred to as the "*Guideline*").

The Guideline provides some clarifications and instructions on some aspects regarding the protection of personal data in certain sectors, during the infection caused by the COVID-19 in Albania. [These aspects address the processing of personal data, in the framework of measures against coronavirus, in sectors such as employment, telecommunications, health and education.](#)

In virtue of this Guideline and the applicable legislation in force, the Commissioner's Office highlights that the processing of personal data in the fight against COVID-19 does not constitute a reason for restricting the rights and freedoms of citizens. On the other hand, the legislation on personal data protection does not prevent and/or restrict the rights and obligations of controllers regarding the processing of personal data in the fight against COVID-19.

Furthermore, the Commissioner's Office emphasizes that the aspects addressed in this Guideline derive from the correct interpretation of personal data protection legislation and are also in full harmony with the positions of the European Union (EU) counterpart institutions and Council of Europe (CoE), as well as in the spirit of the EU Regulatory Framework and the CoE instruments with the object and focus that of personal data protection.

Some of the most important aspects of this Guideline are as follows:

➤ **Personal data processing by employers**

In the conditions of the unusual and difficult situation caused by the spread of COVID-19, employers are facing difficulties and even bigger questions regarding the processing of employees' data. A part of the employers have decided to keep their staff engaged through work from home or by teleworking.

Other categories of employers, due to the nature of their activity, continue to engage their employees in normal workplaces and, in addition to hygienic-sanitary measures and by insuring social distancing in their respective premises, are continuously monitoring the health condition of their employees, in order to prevent the spread of COVID-19.

In connection with the above, employees are, *inter alia*, subject to constant control over the timely detection of any possible COVID-19 symptoms, as well as monitoring with video surveillance systems regarding compliance with hygienic-sanitary measures.

Also, employees engaged through work from home or teleworking, access employers' platforms through virtual private networks (VPN), or use private communication channels (such as personal e-mail addresses), etc.

In these circumstances, the Commissioner's Office clarifies that for the purposes of the measures against COVID-19, in principle, employers may process personal data of employees (such as data obtained from additional monitoring of their health), in quantities and qualities that - reasonably - exceed the usual data processing in normal working conditions.

Processing involves not only collecting and storing processed health data, but also transmitting it to law enforcement agencies in charge of the fight against COVID-19, including, but not limited to, law enforcement agencies conducting epidemiological surveillance (such as provided by the legislation in the field of prevention of infectious diseases).

On the other hand, the processing in question must be carried out in accordance with the principles and criteria of personal data processing provided in Law no. 9887, dated 10.03.2008 "On the protection of personal data", as amended ("*Law on Personal Data Protection*").

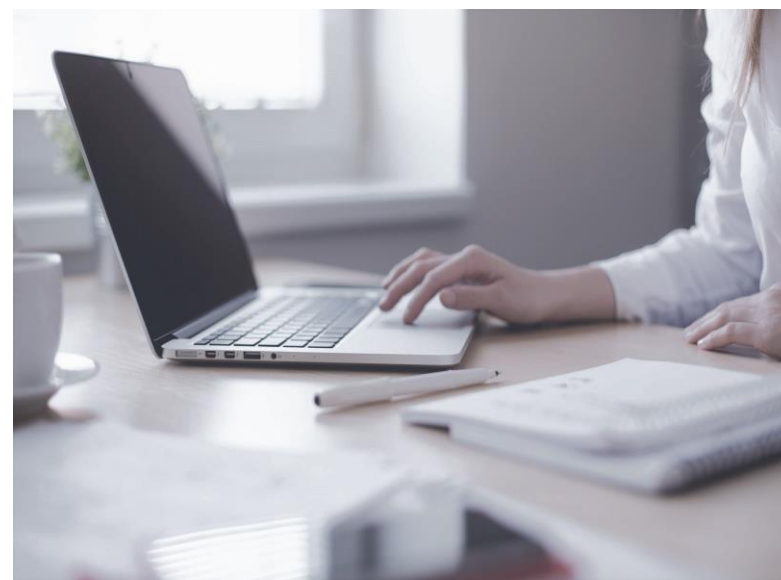
Also, the use of virtual private networks (VPN), as well as other private communication channels, for the purposes of enabling work from home or teleworking, as well as the use of video surveillance systems to monitor compliance with hygienic-sanitary rules, in addition to the above-mentioned

provisions, must be accompanied by technical-organizational measures and strict rules to ensure the data's' inviolability and confidentiality.

For the above purposes, the Commissioner's Office appeals to all controllers to act, additionally, in compliance with the bylaws of the Commissioner of the Right to Information and Personal Data Protection.

In virtue of the above, the controllers are obliged to minimize any potential risk that the processing of personal data might present to human dignity and violation of private life, as well as take measures to return to the "normal" state of personal data processing (including, as the case may be, permanent deletion of processed data), after the state of natural disaster and the spread of COVID-19 has ended.

In particular, employers should not process personal data beyond what is necessary for the purposes of implementing anti COVID-19 measures. The processing of personal data should be carried out in proportion to the purpose of the processing, and as far as the processing is appropriate, necessary and brings more advantages than disadvantages, for the realization of the purpose in question.



➤ **Data location transmission processed on electronic communications networks**

One of the forms currently being used in various countries around the world, regarding the prevention of the spread of COVID-19, is *contact tracing* through individuals' location data transmission, obtained from the operators of electronic communications networks.

Analysis of location data trends is being used as a tool for successfully coping with the crisis caused by COVID-19.



Location data means any data processed in an electronic communications network, indicating the geographical position of the end device (mobile, tablet, etc.) of an electronic communications network user. This data includes concrete information on how equipment and people move in space from time to time.

The Commissioner's Office, in compliance with the practice of the EU countries in relation to this aspect, as also in compliance with the Law on Personal Data Protection, provides that the operators of electronic communications networks, *before*

transmitting the location data should make an analysis of the impact that this type of processing has on the private life of citizens.

Especially important in this regard, is keeping the balance between the need that precedes the purpose of location data processing in the framework of the anti COVID-19 measures, as well as the quantity, quality and format of these data.

Therefore, the Commissioner's Office provides that the transmission of location data performed in an aggregated and anonymous manner - e.g. to signal cases of violation of social distancing measures, or to show movements of individuals to go, or to leave the infected areas - as may be necessary within the measures to prevent COVID-19, or in the context of epidemiological surveillance, *does not constitute a violation of the provisions of the Law on Personal Data Protection and bylaws issued pursuant to it.*

In any case, the processing of the data in question must be carried out in accordance with the principles and legal criteria set out in the Law on Personal Data Protection.

Also, the Commissioner's Office clarifies that, in any case, the obligation of processing of location data in accordance with the aforementioned legal provisions, does not affect the obligations of the operators of electronic communications networks to act in accordance with the provisions of sectoral legislation.

Based on the practice followed so far in EU countries, the Commissioner's Office, in any case, provides that the processing of large-scale personal data (despite their aggregation and anonymization) can be performed, in principle, only when - on the basis of scientific evidence - the potential benefits in relation to the public health guarantee by a digitalepidemiological surveillance (e.g. contact tracing), including their accuracy, outweigh (therefore, are greater than) the

benefits that may arise from other alternative solutions, which would be less intrusive in private life.

While the real time information on the spread of COVID-19 may be useful for its isolation, it is important to note that, in these cases, it is nevertheless preferable to apply less intrusive technical solutions in private life.

As mentioned above, the development and application of these surveillance methods should be based on a preliminary assessment of the potential impact of data processing intended to be collected on the fundamental rights and freedoms of individuals.

For this reason, the personal data processing process must also be conceived and carried out in such a way as to prevent or minimize the risk of interference with fundamental rights and freedoms.

➤ **Data processing in relation to the epidemiological surveillance**

The Commissioner's Office clarifies that data processing related to the epidemiological surveillance as provided in Law No. 15/2016, dated 10.03.2016 "*On the prevention and fight of infections and infectious diseases*" ("*Law 15/2016*") is not hindered and/or limited by the provisions of the Law on Personal Data Protection.

Therefore, events such as the spread of COVID-19, which pose serious health and life-threatening threats to citizens, require special control measures or coordinated tracing of contacts to identify persons who may be infected or at risk of infection.

The Commissioner's Office considers that the authorities in charge of taking measures in the context of epidemiological surveillance in the fight against COVID-19 are legally authorized to process personal data and, in

particular, those related to the health of individuals.

The processing includes, among others, collecting the necessary data regarding the implementation of epidemiological surveillance, storage of this data in accordance with the applicable legal deadlines, their exchange and transmission between the authorities in question and other public and private controllers, etc.



Also, in the framework of measures against the global pandemic caused by COVID-19, authorities engaged in the fight against COVID-19 may have as mandatory or necessary the international data transfer to various countries and/or international organizations, for statistical purposes, scientific and/or for their more specialized analysis purposes.

In this context, the Commissioner's Office provides that the above-mentioned controllers should act in accordance with the provisions of the Law on Personal Data Protection, which regulate and discipline the international transfer of personal data.

Personal data processing actions for the purposes referred to herein shall not constitute a cause for restriction of the individuals' right to the protection of their personal data, as provided for in the legislation on the protection of personal data. As mentioned above, even in this case are applied the provisions of the Law on Personal Data Protection, as well as the bylaws of the Commissioner.

Furthermore, it is worth noting that the anonymization of data, as a measure for the protection of privacy, in the context of epidemiological surveillance, does not automatically lead to restriction of the right to personal data protection, on the excuse that this right prevents or does not comply with the purpose of epidemiological surveillance. Anonymous data are also expressly regulated in the Law on Personal Data Protection.

In this regard, the Commissioner's Office considers that in the use and administration of online platforms, which provide technical solutions that aim to ensure the continuity of educational activity, *it is preferable to select standard configurations oriented towards personal data protection, in order to avoid as much as possible the possibility of violating the rights of data subjects (pupils, students, pedagogical staff).*

Even in this case it is extremely important to avoid processing personal data beyond the quantity and/or quality required to achieve the goal of ensuring educational continuity, in accordance with the Law on Personal Data Protection.

In addition, an essential importance in this aspect, has also the selection of the legal criterion for data processing of the relevant data subjects.

Particularly important in this regard is the case of children, for whom the Commissioner's Office strongly recommends obtaining parental or legal approval of the child in connection with the processing of data in the context of online teaching.

The above obligation must be further accompanied by the fully transparent (and, possibly, exhaustive) information of the parents or legal guardians regarding the aspects of the processing of the children's data, pursuant to the provisions of the Law on the Protection of Personal Data.

As in all other cases treated in this Guideline, the Commissioner's Office emphasizes that data processing in the education sector, in terms of social distancing imposed by anti COVID-19 measures, must be carried out in accordance with the provisions of the applicable legislation in the field of personal data protection and sectoral legislation.



➤ Data processing in the education sector

As is already known, due to anti COVID-19 measures, pre-university and university education institutions have not interrupted the teaching process, but have continued it through online platforms, in which are processed personal data (including recorded images) of pupils, students and pedagogical staff of educational institutions.



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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 intermediary 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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