



Food for Thought

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Muja Law brings you the latest issue of *Food for Thought*.

This issue provides the answers to some standard questions asked in Albania in relation to the personal data protection during the situation created by COVID-19 infection.

Amidst the attempts to ease the restrictions and resume usual professional and commercial activities by adapting related working methods in accordance with the Covid-19 Hygiene and Sanitary Protocols (*recently published in the Official Journal No.80, dated 05.05.2020*), the Personal Data Protection Commissioner (herein referred to as the “*Commissioner*”) has clarified certain aspects of these protocols as regards the processing of personal data (*especially those related to health*).

Some of the most important aspects in this regard are as follows:

Q: Can companies collect health data in relation to COVID-19 from employees or visitors who access their premises?

A: The Commissioner provides that under the COVID-19 Hygiene and Sanitary Protocol, companies are required to collect personal and health information regarding COVID-19 symptoms. In virtue of the answers provided, each employer has an obligation to protect the health and lives of employees, as well as any other party related to them (e.g. *visitors*).

However, the Commissioner specifies that this does not mean that companies have the right to process (collect, store, transmit, etc.) personal and sensitive data beyond what is necessary for the purpose of detecting COVID-19 symptoms.

Therefore, the Commissioner provides that it is justified to ask employees and visitors

about COVID-19 symptoms, or if they had previous contacts with infected individuals (*or exposed to infected individuals*) as well as to record this data, as specified in the relevant protocols. *However, further processing of personal and health data, other than the requisites of these protocols, is not permissible.*

Q: What measures should the employer adopt in the context of personal data protection?

A: The Commissioner provides that in the capacity of the data controller, the employer has the obligation to apply the principles and obligations laid down by the legislation on personal data protection, including the law on personal data protection and the bylaws adopted by the Commissioner (*in particular, Instructions No. 3, 11, 22, 24 and 47-19*).

Moreover, the employer must record and document the transmission of personal and sensitive data to law enforcement institutions, which are in charge with adopting and enforcing COVID-19 measures.

Q: Who can be appointed by the employer for processing personal data and what responsibility does he/she have in this case?

A: The Commissioner provides that the answer to this question can be found in each of the COVID-19 Hygiene and Sanitary Protocols (*the green, yellow and red one*).

Persons in charge with implementing the measures specified in the respective protocols, including the recording of COVID-19 symptoms, must sign a confidentiality statement relating to the processing of personal data.

Furthermore, the Commissioner provides that in any event, data controllers (*employers*) are, in principle, responsible for the potential violations of privacy of data subjects.



Q: Should the employee or visitor be informed on the processing of their personal data, and if so, how?

A: Controllers are required to inform the relevant categories of data subjects (*employee, visitor, etc.*), among others, about

the purpose of personal data processing, the categories of personal data being processed (*e.g. COVID-19 symptoms*), persons carrying out the processing activities, the eventual recipients of the data processed, as well as the fact whether data processing is essential or not.

The information provided to the data subjects must be clear, accurate and easily accessible.

Q: Can employers tell their staff that a colleague may have potentially contracted COVID-19?

A: The Commissioner provides that the employer needs to keep its staff informed of any case of COVID-19 identified in their organization. It is the employer's responsibility to protect the health and safety of its employees as well as a duty of care.

However, the Commissioner notes that the employer should do the utmost efforts to avoid naming individuals, and should not provide more information than necessary. Identification would be permissible only in cases where the relevant circumstances make it inevitable. The burden of proof for this purpose lies with the data controller.

In addition, the employer should also inform law enforcement agencies, including those charged with the epidemiological investigation, as set out in the protocol applicable to your organization.

Q: Can the employer publish or disclose personal data collected under the COVID-19 Hygiene and Sanitary Protocol?

A: The Commissioner provides that *a priori* personal data cannot be made public, as this would be considered illegal processing.

However, the disclosure of personal data and those relating to the health of the

employees/visitors, in the context of the measures adopted for COVID-19 containment, could be authorized when this personal information is shared with the law enforcement institutions in charge for the pandemic containment, in accordance with the relevant law and protocol.

Q: How long should the employees and visitors' health related data be retained?

A: The Commissioner provides that this information must be retained for as long as it is necessary to meet the legal requirements in the context of the measures relating to COVID-19 containment.

In any event, the Commissioner considers that the data retention period shall not be longer than the virus incubation period. However, longer processing terms may be legitimate subject to a specific legal provision (*e.g. the legislation on the prevention of infections and infectious diseases*).

Once the processing purpose has been achieved, the data used in this ambit must be deleted/destroyed in a safe, confidential and irreversible fashion. Outsourcing of this operation to third parties will not be authorized unless the provisions of the legislation on personal data protection governing the control-processing relationship are fully observed.

Deletion/destruction of personal data shall be properly documented.

Q: The staff will be homeworking during the epidemic. What security measures should be in place for this purpose?

A: The Commissioner specifies that personal data protection legislation does not hamper the various types of activities or tasks performed at home.



Accordingly, staff members who are working from home, can use personal communication equipment, or those provided by the employer.

However, employers must put in place appropriate technical and organizational measures to ensure the security and confidentiality of personal data.

Due consideration must be given in this regard to the use of various online communication platforms (*e.g. to attend videoconferences*), in order to prevent unauthorized access to the personal data (*video images, etc.*).

The Commissioner states that the rate of violation of private life as a result of unauthorized processing of personal data when homeworking is greater, and potentially more harmful than in normal circumstances (*at the workplace*).



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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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