

LEGAL ALERT

Amendments to the Personal Data Processing and Protection Regulations

INTRODUCTION OF NEW REQUIREMENTS TO THE PERSONAL DATA CONTROLLERS

1. Introduction

According to the effective Bulgarian legislation¹ each person (legal entity or individual) who processes personal data in the course of its activity is considered a personal data controller. The personal data controllers should apply for registration with the Register of the Personal Data Controllers at the Personal Data Protection Commission (the “**Commission**”) prior to the actual personal data processing. Controllers should take appropriate technical and organizational measures against any unlawful forms of processing, loss or destruction of the processed data². The required technical and organizational measures and level of protection are defined in a regulation adopted by the Commission³.

On 16 February 2013 the new *Regulation № 1/30.01.2013 on the Minimum Level of Technical and Organizational Measures and the Permissible Type of Personal Data Protection* (the “**Regulation**”) has entered into force.

The new provisions elaborate the previous requirements by (i) giving new criteria for determination of the applicable level of data protection; and (ii) stipulating more detailed list of required measures that should be provided by all controllers.

Each controller should comply with the new requirements within (i) six months; (ii) nine months; or (iii) one year effective from the date of assessment of the level of impact its own personal data registers (please refer to item 2 below).

This legal alert aims to outline the main requirements introduced by the Regulation and the actions that controllers in Bulgaria should take for their compliance.

2. Level of Impact

The new Regulation introduces a new term, namely: “level of impact”. The level of impact of the personal data processing on each concerned individual is the criteria for determination of the level of protection that each controller should provide. The levels of impact are **low, medium, high and extremely high**⁴ where the main distinguishing criteria is whether any and/or what kind of sensitive personal data are processed.

The controllers should assess the level of impact of their personal data processing not later than 16 August 2013. After this period, controllers should conduct periodical assessments⁵.

1 Art. 3 of the Personal Data Protection Act (“**PDPA**”).

2 Art. 23 of PDPA.

3 Art. 23, Para 5 of PDPA.

4 Art. 13 of the Regulation.

5 Art. 11, Para 3 of the Regulation.



3. Re-assessment of the Level of Protection

Depending on the determined level of impact, controllers should assess the particular level of protection that apply to their personal data registers and provide the required measures for protection⁶. In practice, the new rules for level of impact represent a new criteria for assessment of the applicable level of protection. Currently, controllers define the level of protection applicable to their activity based on the technical means used for the personal data processing. Now, controllers should re-assess the due level of protection mostly based on the new criteria – level of impact.

4. Required Personal Data Protection Measures

The Regulation stipulates an exhaustive list of the measures for protection that should be provided by controllers depending on the due level of protection. Here is a non-exhaustive list of the new measures:

- a) **Non-disclosure declaration or consent** signed by each employee who has access to personal data⁷;
- b) **Trainings organized by a controller** for its employees involved in the personal data processing and transfer. The trainings should give the concerned employees basic awareness on (i) the rules on legal personal data processing; and (ii) the measures that are to be taken in case of emergency⁸, etc.

5. Amendment to the controllers' internal instructions on personal data processing

The Regulation requires additional content of controllers' internal instructions corresponding to the new rules above.

6. Change of controllers' registration with the Register of Personal Data Controllers

In most of the cases, upon re-assessment of the level of protection the personal data controllers will define a new due level. This and any other changes related to the new rules should be indicated under controllers' batch in the Register of Personal Data Controllers with the Commission.

Our well-qualified employment team will be glad to provide you any legal assistance that you may need in order to comply with the new personal data protection regulations.

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⁶ Art. 17 of the Regulation.

⁷ Art. 7, Para 5 of the Regulation.

⁸ Art. 7, Para 2, Item 6 and 7 and Art. 9, Para 2, Item 17 of the Regulation.