

INSTRUCTION

No. 41, Dated 13.06.2014

ON “ALLOWING CERTAIN CATEGORIES OF INTERNATIONAL TRANSFERS OF PERSONAL DATA IN A COUNTRY WITH NO ADEQUATE LEVEL OF PERSONAL DATA PROTECTION”

In accordance with article 9/3 and article 8/2 of the law no. 9887, dated 0.03.2008 “On personal data protection” as amended, the Commissioner for personal data protection:

INSTRUCTS

1. The purpose of this instruction is to determine binding rules to be enforced by public and private controllers regarding international transfers of personal data (hereinafter “international transfers”) in countries that do not ensure adequate level of personal data protection.
2. Countries which do not ensure adequate level of personal data protection are the countries not included in the list defined upon the decision of the Commissioner “On determining countries with adequate level of personal data protection”.
3. In cases of allowing international transfers in countries that do not ensure adequate level of personal data protection as stipulated in this instruction, shall be considered as exceptional cases and be interpreted narrowly.
4. The international transfer of personal data to a third country not ensuring an adequate level of personal data protection is allowed when the data subject has provided consent.
 - 4.1 The consent should be a clear indicator of the data subject’s will to transfer personal data, either specific and given freely;
 - 4.2 The consent includes the prior information of the data subject regarding the specific circumstances of the data transfer, the purpose of the data transfer and the specific risk arising from the fact that his data shall be transferred to a country that does not ensure adequate protection of such data.
5. The international data transfer to a country that does not ensure adequate protection of personal data is allowed when it has been authorized by international acts ratified by the Republic of Albania, which are directly applicable.
6. The international data transfer to a country that does not ensure adequate protection of personal data is allowed when it is necessary for the fulfillment of the contract between data subject and the controller or for enforcing pre-contractual measures, obtained as a

response to the request from the data subject, or where the data transfer is necessary for the completion or implementation of a contract between the controller and a third party, which falls in the interest of the data subject.

6.1 In this case it is required to have a close and essential connection between the data subject and the purposes of the contract;

6.2 Transfer of additional non necessary information for the purpose of international transfers or transfers for a different purpose from the contract fulfillment is not allowed.

7. The international data transfer to a third country that does not ensure an adequate level of personal data protection is allowed when it is necessary for the protection of vital interests of the data subject.

7.1 The protection of vital interest may be the self-interest of the data subject in case of a health emergency as directly necessary with the aim to be provided with the required medical care;

7.1.1 The international health-data transfer is not allowed if the aim is other than the treatment of the data subject special case, such as performance of general health research that would not deliver results up to a certain time in the future.

8. The international data transfer to a third country that does not ensure an adequate level of personal data protection is allowed when it is necessary or consists in a legal requirement for an important public interest or for the exercise or protection of a legal right.

8.1 The important public interest should be as such not only for the personal data transferred to the recipient country.

9. The international data transfer to a third country that does not ensure an adequate level of personal data protection is allowed when performed by a register, which is open to consultancies and provides information to the public in general.

9.1 In this case, public and private controllers should comply with the provisions of Instruction No. 39, dated 05.08.2013 of the Commissioner regarding the processing of personal data obtained by a public register.

10. The international data transfer to a third country that does not ensure an adequate level of a category of personal data is allowed when the controller has in place adequate privacy safeguards, fundamental rights and freedoms of individuals based on Contractual Standard Clauses and Binding corporate Rules.

10.1 Public or private controllers may apply two Standards of Contractual Clauses according the Decision of the European Commission reflecting the requirements of Directive 95/46/EC with regard to the processing of personal data;

10.2 As controllers, international organizations that transfer personal data within the company or group of companies may use Binding Corporate Rules.

11. Failure to implement the requirements in this instruction will be sanctioned under article 39 of the law on personal data protection, as amended.

12. Instruction No. 1, dated 19.02.2010 ““Allowing certain categories of personal data be transferred to countries which do not ensure an adequate level of personal data protection” is repealed.

This instruction enters into force immediately after the publication in the Official Gazette.

COMMISSIONER

Flora ÇABEJ POGAÇE