

Commercial Organizations Reopening Business after COVID-19 Lockdown Data Protection Alert

For the last few days the Bulgarian government has been continuously announcing forthcoming relaxation of lockdown measures governing the business and social life in Bulgaria for the last 2 months.

Many commercial enterprises are now considering reopening their businesses. At the same time, they are faced with a new set of relaxed – yet applicable – restrictions relating to visiting, working, delivering goods or services, doing sports, etc., under a continuing COVID-19 pandemic.

In doing this, each employer needs to consider and find an appropriate and effective way for complying with a number of regulations. An important set of rules in this respect are those related to **data protection**.

Almost all **new, relaxed, measures** – such as measurement of individuals body temperatures at the premises' entrance, collecting health data from individuals' testing and monitoring, other forms of individuals' screening, collecting data about individuals' contacts with persons who at the relevant moment are undergoing or have undergone the COVID-19, to name a few of the expected new measures– **involve processing of personal data**.

Such processing of personal data must comply with the **General Data Protection Regulation (“GDPR”)**, the **Bulgarian Personal Data Protection Act (“PDPA”)** and any other piece of Bulgarian legislation that may be applicable from time to time.

It may reasonably be expected that:

- relevant data subjects will include employees, visitors, clients, and contractors;
- some of the personal data to be processed is or has been already processed by business organizations as data controllers (but for a different purpose and, hence, most probably, on a different legal basis);
- business organizations have certain technical and organization measures in place securing controlled personal data and protecting data subjects' rights; and
- business organizations have been processing personal data generally in compliance with the GDPR.

However, commercial organizations should be mindful that **the new personal data processing stemming from the implementation of the new measures against the spread of COVID-19 would be new to and different from any other processing of personal data carried out so far**. That is so, because:

- such data processing is necessary for one or more new and unusual purposes;
- most of the personal data to be processed relates to data subjects' health and, therefore, qualifies as a special category of personal data subject to a higher level of protection;
- in a COVID-19 pandemic – which by itself is an unusual situation - it is difficult to identify the reasonable expectations of data subjects with respect to the processing of their personal data; and
- relevant health care and other COVID-19 related specific regulations are dynamically changing and, respectively, processing of personal data in this regard needs also to be constantly adjusted to the relevant regulations as applicable from time to time.

To stay in compliance with the GDPR, PDPA and other relevant Bulgarian regulations, **any business organization needs to adjust its technical and organization measures for data protection** so that such measures are appropriate in view of the new personal data processing.

Potential legal issues to be considered with respect to the processing of personal data related to the implementation of the new restrictions against the spread of COVID-19 include, without being limited to, the following:

- a. identifying the proper lawful basis for processing;***
- b. conducting a data protection impact assessment;***
- c. ensuring transparency;***
- d. giving privacy notices and otherwise informing data subjects;***
- e. security of processed personal data;***
- f. retention;***
- g. purpose limitations;***
- h. data minimization;***
- i. potential engagement of data processors;***
- j. accountability of data controllers; and***
- k. appropriate technical and organizational measures for respect and protection of data subject rights.***

Failing to address these legal issues in a proper and timely manner, any business organization runs the risk of facing a data subject's complaint for breach of the GDPR, supervision review by the Commission for Personal Data Protection or a data breach claim. Potential fines for noncompliance under the GDPR and PDPA continue to be extremely high. The risk seems real, given the large number of potential data subjects to be affected and the sensitivity of the personal data to be processed.

If you have questions or need legal advice or assistance in the matter, feel free to contact DGKV.

Our law firm has been working in the area of data protection for more than 12 years advising national and international clients on a huge variety of data privacy issues and providing legal assistance in data protection matters in a number of unusual and often new to the market situations.

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