

PARLIAMENTARY ASSEMBLY OF BOSNIA AND HERZEGOVINA
308

Pursuant to Article IV 4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, on its 7th session of the House of Representatives held on 27 July 2011, and the 5th session of the House of Peoples held on 14 September 2011, adopted

LAW ON AMENDMENTS TO THE LAW ON THE PROTECTION OF PERSONAL DATA

Article 1

In the Law on Protection of Personal Data ("Official Gazette of BiH" No. 49/06), Article 1, paragraph (1) the word "secrecy" is replaced by the words "privacy and data protection."

Article 2

In Article 2, paragraph (2), the words: "natural persons exclusively for personal purposes" shall be replaced by the words: "natural persons for the sole purpose of personal activity or activities of the household."

Paragraph (3) is deleted.

Article 3

In Article 3, item: "personal data", the words: "on the basis of which it was determined" are replaced by the words: "that has been identified."

In item: "special categories of data" the word "citizenship" shall be deleted.

Item: "access to data" shall be deleted.

Item "user" shall be replaced by item: "the third party is any natural or legal person, public authority, agency or any other body, other than the data subject, the controller, data processor and persons who are under the direct responsibility of the controller or data processor, authorized to process the data."

After item: "the consent of the data subject", a new item is inserted and it reads: "Recipient means a natural or legal person, public authority, agency or other authority to whom the information is disclosed, regardless of whether they are the third party or not; bodies that can receive data upon the special request are not considered recipients."

Article 4

In Article 5, paragraph (2), in the first line after the word "consent", the words: "for processing special categories of personal data" are added.

Article 5

In Article 6, paragraph (1), in point b) after the words "data subject", the words: "upon own request" are added.

In point c) after the word "protection", the word: "vital" is added.

In point e) the word "user" is replaced by the words: "the third party". The same applies to the entire text of the Law in appropriate cases.

In point f) at the end the following text is added:

"except where there are the prevailing interests for fundamental rights and freedoms of the data subject in the activities, especially the right to privacy in relation to the processing of personal data."

Article 6

After Article 12 , Article 12a is added and it reads:

"Article 12a (Representative)

The controller who is not seated on the territory of Bosnia and Herzegovina and who uses in the data processing the automatic or other equipment located on the territory of Bosnia and Herzegovina shall determine the representative for such processing, unless the equipment is used only for the purpose of transit of data over Bosnia and Herzegovina."

Article 7

In Article 14, paragraph (2) in the second line after the words: "collections of personal data", the words: "that are managed fully or partially automatic" are added.

In paragraph (3) in the first sentence, a comma replaces the full stop and the words "in the case the full or partial automatic processing involves some risk for the rights and freedoms of the data subject" are added.

After paragraph (3), a new paragraph (4) is inserted and it reads: "(4) The Agency shall carry out the prior control, especially in cases where:

- a) it involves the processing of special categories of personal data;
- b) it involves the processing of personal data which is intended to assess the personality of the data subject including the decision-making based on such processing."

Current paragraphs (4), (5), (6) and (7) become paragraphs (5), (6), (7) and (8).

Article 8

Article 18 is amended and reads:

"Article 18

(Data Transfer Abroad)

- (1) Personal data that are processed may be taken out of Bosnia and Herzegovina to another country or be given to an international organization that implements adequate safeguards for personal data set out in this Law.
- (2) Adequacy of safeguards referred to in paragraph (1) of this Article is estimated on the basis of specific circumstances in which the transfer of personal data is conducted, in which particularly the following shall be taken into account:
 - a) types of personal data;
 - b) the purpose and period of processing;

- c) the country in which data is transferred;
 - d) statutory rules in force in the country in which data are transferred;
 - e) professional rules and security measures that must be respected in that country.
- (3) Personal data that are processed may be taken out of Bosnia and Herzegovina to another country that does not provide adequate safeguards stipulated by this law when:
- a) the disclosure of personal data is provided by special law or international treaty binding for Bosnia and Herzegovina;
 - b) the prior consent was obtained from the person whose data are transferred and the person was informed on the potential consequences of the data transfer;
 - c) the disclosure of personal data is necessary to fulfill the contract between the data subject and the controller or the fulfillment of pre-contractual obligations undertaken at the request of the person whose data are processed;
 - d) the disclosure of personal data is necessary to save the life of the person to whom the data pertains or when it is in his/her vital interests;
 - e) the personal data are transferred from the files or records which are, in accordance with the law or other regulations, available to the public;
 - f) the transfer of personal data is necessary for the public interest reasons;
 - g) the transfer of personal data is necessary for concluding or fulfilling a contract between the controller with a third party, when the contract is in the interest of the person whose data are processed.
- (4) Exceptionally, the Agency may approve the transfer of data from Bosnia and Herzegovina to another country which does not provide an appropriate level of protection as defined in paragraph (1) of this Article, when a controller in another country provides adequate safeguards for the protection of privacy and fundamental rights and freedoms of individuals or provision of similar rights arises from the provisions of a special agreement."

Article 9

In Article 20, in its name, the word "archive" is replaced by the word "historic".

In paragraph (1), the word "archive" is replaced by the word "historic".

In paragraph (2), the word "archives" is replaced by the word "history".

Article 10

After Article 21, Article 21a is added and it reads:

"Article 21a

(Processing of personal data via video surveillance)

- (1) The video surveillance recordings stored on the specific space on which the data subject may be identified represent a collection of personal data.
- (2) The surveillance controller is required to make a decision that will contain the processing rules in order to respect the rights of privacy and personal life of the data subject, in case the video surveillance is not prescribed by law.
- (3) The surveillance controller must put in a visible place a notice on the performance of surveillance and the contact through which details about video surveillance can be obtained.

Article 11

In Article 23, at the end of the text, the punctuation sign full stop is replaced by the punctuation sign comma and the words: "and provide information in accordance with Article 22 of this Law" are added.

Article 12

In Article 24, paragraph (1), in the first line, after the words: "data subject", the words: "at his/her request" are added.

In paragraph (2), point b) is amended and reads:

"b) if the information or the fact that the data were stored is to be held in secret under the laws or with respect to their type, especially because of overriding legitimate interests of the third party."

Points c) and d) are deleted.

Former point e) becomes the point c).

Article 13

Article 25, paragraph (1), the word "written" is deleted.

Article 14

Article 26 is amended and reads:

"Article 26

(Complaint related to direct marketing)

- (1) The data subject is entitled to file a free of charge complaint upon the request of the controller concerning the future use or transfer of his/her data for direct marketing purposes or to be notified before his/her data are transferred for the first time to third parties for direct marketing.
- (2) In case the data subject does not give his/her consent, personal data may not be provided to third parties."

Article 15

Article 27 is amended and reads:

"Article 27

(Correction, blocking and deletion of data)

- (1) The controller shall, at the request of the data subject, correct, delete or block data that were found to be incorrect or incorrectly listed or processed in any other manner that is contrary to law and rules relating to data processing.
- (2) The controller shall, at the request of the data subject, inform the third party to whom the data were transferred on the corrections referred to in paragraph (1) of this Article."

Article 16

In Article 28, paragraph (1), point e), before the word "economic", the word "important" is added.

After paragraph (2), new paragraphs (3) and (4) are added and they read as follows:

"(3) The data controller shall give reasons why the request for supply of information to the data subject about the processing of his/her personal data was rejected.

(4) The data controller is obliged to submit to the Agency an annual report on rejected requests of data subjects."

Article 17

In Article 35, after paragraph (1), a new paragraph (2) is added and it reads: "(2) The Agency shall act with complete independence in carrying out the duties entrusted to it."

Article 18

In article 40, in paragraph (1), item c) is amended to read:

"c) submission to the Parliamentary Assembly of Bosnia and Herzegovina of an annual report on protection of personal data, which should be available to the public;"

In paragraph (2), after the point j) a new point k) is added and it reads: "k) impose a penalty in the infringement proceedings, in accordance with this law."

Article 19

In Article 42, paragraph (2), the words "the Council of Ministers" shall be replaced with the words: "Parliamentary Assembly of Bosnia and Herzegovina."

After paragraph (2), new paragraphs (3) and (4) are added and they read: "(3) The Director shall have one deputy.

(4) The Deputy Director shall replace the Director during his absence and perform duties assigned to him by the Director. "

Article 20

Article 43 is amended and reads:

"Article 43

(Appointment of Director and Deputy Director)

Director and Deputy Director are appointed by the Parliamentary Assembly of Bosnia and Herzegovina for a term of five years, with possibility of reappointment.

Article 21

Article 44 is amended and reads:

"Article 44

(Special requirements for appointment of Director and Deputy Director)

Besides general requirements, the candidate for the Director and Deputy Director must have:

- a) Education: Bachelor of Law, at least VII level of education, i.e. the Bologna system of study, with 240 ECTS points earned;
- b) Five years of experience in management in administration;
- c) Demonstrated experience in the field of human rights;
- d) Recognized high moral status."

Article 22

Article 45 is amended and reads:

"Article 45

(Terms and conditions for suspension and dismissal of Director and Deputy Director)

- (1) The Parliamentary Assembly of Bosnia and Herzegovina may suspend the Director and Deputy Director if unlawful operation of the Agency is found.
- (2) The suspension will last until unlawful operation of the Agency has been determined by the final decision.
- (3) The Parliamentary Assembly of Bosnia and Herzegovina may resolve the Director and Deputy Director of their duties before the end of his/her mandate:
 - a) at his/her request,
 - b) if he/she is permanently unable to perform his/her duties,
 - c) if unlawful operation of the Agency is found,
 - d) if the final decision on disciplinary responsibility has been made for him/her,
 - e) if he/she was pronounced a final sentence of imprisonment in force exceeding six months."

Article 23

After chapter IV, Chapter IVa is added and it reads:

"CHAPTER IVa PERSONAL DATA OF FORMER INSTITUTIONS

Article 47a

(Personal data of former institutions)

- (1) For the purposes of this Law, the former institutions are: government bodies, executive and judicial authority bodies, as well as the social organizations of the Socialist Federal Republic of Yugoslavia.
- (2) Personal data which were stored by the former institutions may be used by the public authorities of BiH, who by the nature of their work perform the same jurisdiction, in accordance with this law.

Article 47b.

(Terms and conditions for data processing of the former institutions)

- (1) Public authorities in Bosnia and Herzegovina are permitted to process the data of the former institutions in the following cases:
 - a) data processing is necessary for the lawful execution of duties in their jurisdiction;
 - b) recovery of collecting such data is an inappropriate effort;
 - c) the data subject has not filed a complaint for processing in accordance with Article 47C of this law;
 - d) the competence and accountability of public authorities that process the data is clearly defined.
- (2) Personal data processed in accordance with paragraph (1) of this Article are processed exclusively for the purpose of carrying out responsibilities of public authority.

Article 47C

(Right to objection due to processing of the former institutions' data)

- 1) The data subject may file an objection to the processing of the former institutions' data if such data were collected without his/her consent, or if it is contrary to the applicable legal rules.
- 2) The data subject should be adequately informed about:
 - a) sources of such data;
 - b) the original purpose of their use;
 - c) the nature and scope of the intended processing;
 - d) current public authority which is responsible for data processing; and
 - e) the possibility of filing a complaint for processing.
- (3) Prior to the data processing, the public authority can inform data subjects in general if an individual communication is inadequate effort or if the legitimate interest of the data subject is not overriding, when it is necessary to inform the data subject personally about the data processing.

Article 47d

(Deletion of personal data of former institutions)

- (1) If the processing of data of the former institutions is not permitted in accordance with Article 47b of this law, then the public body in possession of such data should deliver it to the relevant records.
- (2) The data subject may request deletion of data of the former institutions if they were illegally collected.
- (3) The public authority which receives such a request must make a decision on deleting data if it is not contrary to public interest or the legitimate interests of the third party."

Article 24

In Article 48, paragraph (2), the words: "the controller as a responsible person" shall be replaced with the words: "responsible person of the controller."

In paragraph (3, the words: "the controller as an employee" shall be replaced by the words: "an employee of the controller."

Article 25

Article 49, paragraph (1), after the point r) new points s) and t) are added and they read:
"s) does not designate its representative for data processing in Bosnia and Herzegovina (Article 12a);

t) carries out a video surveillance but has not made a decision that will contain the processing rules and/or has not stated a notice on the performance of video surveillance in a visible place (Article 21a)."

In paragraph (2), the words: "controller as the responsible person" shall be replaced by the words: "responsible person of the controller."

In paragraph (3), the words: "the controller as a person employed" shall be replaced by the words: "an employee of the controller."

Article 26

In Article 50, paragraph (1), point p) is deleted and the previous points. q), r), s), t), u) and v) become points. p), q), r), s), t) and u).

In the previous point q) which becomes point p), the word: "written" shall be deleted.

The previous point s), which becomes point r) is amended and reads:

"r) fails to provide for the data subject to lodge a complaint free of charge regarding future use or transfer of his/her data for direct marketing purposes or does not notify the data subject prior to the first transfer of data to third parties for direct marketing purposes (Article 26 paragraph (1));"

The current point t) which becomes the point s) is amended and reads: "s) to submit personal data to any third party without the consent of the data subject (Article 26 paragraph (2))."

After the current point v) which becomes the point u), new points v) and z) are added and they read:

"v) does not specify the reasons for rejecting the request for information (Article 28 paragraph (3));

z) does not submit to the Agency an annual report on rejected requests of the data subjects (Article 28 paragraph (4));".

In paragraph (2), the words: "controller as the responsible person" shall be replaced with the words "responsible person of the controller."

In paragraph (3), the words: "the controller as a person employed" shall be replaced by the words "an employee of the controller."

Article 27

(Enforcement)

This Law shall come into force on the eighth day after its publication in "Official Gazette of BiH".