Legal Flash

New rules for the lawful processing of personal data

Law No 4624/2019 on the "Hellenic Data Protection Authority, implementing measures of the Regulation (EU) 2016/679 of The European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and transposition of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 into national law and other provisions" was voted by the Hellenic Parliament and was published in the Official Government Gazette (A´137/29.08.2019) (the "Law").

With the General Data Protection Regulation ("GDPR") already in force, the implementing law, which has been long due, specifies some of its requirements and utilizes the flexibility provided for certain aspects of the GDPR to be adjusted at national law level.

The Law regulates specific data processing cases (such as the processing of personal data in the context of employment relationships) and makes use of the GDPR provisions relating to the extent of some exceptions (scientific and journalistic research).

The key points of the Law are the following:

Repeal of Law 2472/1997

Law 2472/1997 on the protection of individuals with regard to the processing of personal data - with some minor exceptions - is repealed.

Processing of personal data by public bodies

Specific provisions on the processing of personal data by public bodies are included. More specifically:
- In order to avoid any unambiguity, the Law gives the definition of "public body";
- In conformity with article 6 (3a) of the GDPR, a special legal basis for the processing of personal data by public bodies is established. The public bodies are allowed to process the personal data when and if processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority;
- The obligation of public bodies to designate a Data Protection Officer ("DPO") is specified and the DPO's role in public bodies is regulated in detail.

Establishment and operation of the supervisory authority

The Hellenic Data Protection Authority (the "DPA") established by Law 2472/1997, is designated as the supervisory authority within the meaning of article 4 (21) and in accordance with article 51 of the GDPR. The responsibilities, duties and general functioning of the DPA are regulated by the Law.

Minor's consent

Utilizing the flexibility provided by virtue of article 8 of the GDPR, the national legislator states that, in relation to the provision of information society services directly to a minor, its consent is legal, provided that the minor is at least 15 years old. If the minor is less than 15 years old, the consent of his legal representative shall be required.

Processing of genetic data for health and life insurance purposes	The processing of genetic data for health and life insurance purposes is expressly prohibited.
Further data processing	The specific conditions under which public and private bodies can process data for a purpose other than the purpose they were originally collected for (further processing) are provided.
Data processing in employment relationships	Specific conditions are laid down for the processing of personal data in the context of employment relationships. Specifically: • Employee's consent may only exceptionally constitute a legal basis for the processing of his personal data • The conditions for the lawful processing of employees' special categories of personal data are defined • The processing of personal data through closed circuit television ("CCTV") within workplaces, whether publicly accessible or not, is permitted only if it is necessary in order to protect people and property, while employees must be notified of the installation and operation of CCTV. It is emphasized that data collected through CCTV may not be used as a criterion for evaluating employee performance. The conditions for the lawful operation of CCTV in the workplace are set out in detail in the DPA's Directive 1/2011, which remains in force • The concept of "employee" is broadened to include employees with any employment relationship, works or service contract, irrespective of the validity of the contract, job applicants and former employees
Exceptions provided	In accordance with the power accorded to the national legislator by virtue of article 85 of the GDPR, to the extent necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression, there are exceptions to the application of certain provisions of the GDPR, the most important of which relate to: • the lawfulness of processing • the rights of the data subject • the responsibility of the controller and related provisions • the transfers to third countries or international organizations
Restrictions on the exercise of data subject's rights	Restrictions on the exercise of data subject rights are imposed pursuant to article 23 (1) of the GDPR. Specifically: • The data subject's right of information is restricted, whether the personal data is obtained directly from the data subject or from another source • The data subject's right of information and access is restricted in the event that the satisfaction of such rights poses a risk to national or public security • The data subject's right of access is restricted, however when refusing to provide information to the data subject, such refusal must be justified and explained • The data subject's right to request data erasure and the corresponding obligation of the controller to erase data is restricted • The data subject's right to object against a public body is restricted when the processing is imposed by an overriding public interest that exceeds the data subject's interests or when required by law.
Competence of the Hellenic Accreditation System (E.SY.D.)	According to article 42 of the GDPR, the Hellenic Accreditation System (E.SY.D.) is designated as the competent body for the accreditation of bodies that certify compliance with the GDPR.

Sanctions

Criminal and administrative sanctions:
- With the power conferred on Member States by article 84 of the GDPR, the unlawful processing of personal data constitutes a criminal offence
- Stricter penalties are provided if the unlawful processing concerns special categories of personal data or data relating to criminal convictions and offences
- Cases in which the unlawful processing of personal data is considered to be felony are regulated
- In the exercise of the relative power provided for in article 83 (7) of the GDPR, a system of administrative penalties that the DPA may impose on public bodies is laid down

Representation of data subject

Pursuant to article 80 (1) of the GDPR, a data subject is granted the right to assign under certain conditions its representation to a non-profit body, organization or association, in cases where the processing of personal data concerning the data subject violates the provisions of the GDPR or the Law.

Entry into force

The Law is valid upon its publication in the Official Government Gazette, i.e. from August 29, 2019, and onwards.

It is important to note that each individual case needs to be examined based on its own merits, and that the above-mentioned general principles might not necessarily capture all possible eventualities. Our expert advisors are in a position to advise you on the implications arising in relation to your specific case.