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## ANALYSIS OF THE PRESENT SITUATION

### Comparative document on the harmonization of the Law on Personal Data Protection with the Directive 95/46/EC

Component 1

Activity 1.1.2

FINAL VERSION



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**Contents**

INTRODUCTION..... 3  
Directive 95/46/EC..... 3  
LAW ON PERSONAL DATA PROTECTION ..... 5  
COMPARATIVE CHART ..... 7  
CONCLUSION ..... 42

# INTRODUCTION

This report is produced in the framework of the Project "Support of the Directorate for Personal Data Protection" funded by the European Union, managed by Delegation of the European Commission in the country.

The aim of this report is to determine the level of harmonization of the Law on Personal Data Protection with the Directive 95/46/EC. The EU directives are addressed to the member states, and aren't legally binding for citizens in principle. The member states must transpose the directive into internal legislation system. Directive 95/46/EC on the protection of personal data had to be transposed by the end of 1998. All member states have enacted their own data protection legislation.

The beneficiary country is currently participating in the Stabilisation and Association Process. The country has been implementing all commitments undertaken with the Stabilisation and Association Agreement with the EU, which is a key priority of the Accession Partnership. Part of this process is harmonization of the country legislation with the legislation of the EU which will establish grounds and preparation for a successful functioning of the country as a Union member state.

The right to personal data protection in the beneficiary country is regulated with Article 18 of the Constitution, where the groundwork for guaranteeing the security and secrecy of personal data and protection from violations to the personal integrity of citizens is set. This right is specified and further regulated with the provisions of the Law on Personal Data Protection.

## Directive 95/46/EC

This Directive applies to data processed by automated means (e.g. a computer database of customers) and data contained in or intended to be also a part of non automated filing systems (traditional paper files filling system).

It does not apply to the processing of data:

- by a natural person in the course of purely personal or household activities;
- in the course of an activity which falls outside the scope of Community law, such as operations concerning public security, defence or State security.

The Directive aims to protect the rights and freedoms of persons with respect to the processing of personal data by laying down guidelines determining when this processing is lawful. The guidelines relate to:

- the quality of the data: personal data must be processed fairly and lawfully, and collected for specified, explicit and legitimate purposes. They must also be accurate and, where necessary, kept up to date;
- the legitimacy of data processing: personal data may be processed only if the data subject has unambiguously given his/her consent or processing is necessary:

- for the performance of a contract to which the data subject is party or;
- for compliance with a legal obligation to which the controller is subject or;
- in order to protect the vital interests of the data subject or;
- for the performance of a task carried out in the public interest or;
- for the purposes of the legitimate interests pursued by the controller;

special categories of processing: it is forbidden to process personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life. This provision comes with certain qualifications concerning, for example, cases where processing is necessary to protect the vital interests of the data subject or for the purposes of preventive medicine and medical diagnosis;

information to be given to the data subject: the controller must provide the data subject from whom data are collected with certain information relating to himself/herself (the identity of the controller, the purposes of the processing, recipients of the data etc.);

the data subject's right of access to data: every data subject should have the right to obtain from the controller:

confirmation as to whether or not data relating to him/her are being processed and communication of the data undergoing processing;

the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Directive in particular, either because of the incomplete or inaccurate nature of the data, and the notification of these changes to third parties to whom the data have been disclosed.

exemptions and restrictions: the scope of the principles relating to the quality of the data, information to be given to the data subject, right of access and the publicising of processing may be restricted in order to safeguard aspects such as national security, defence, public security, the prosecution of criminal offences, an important economic or financial interest of a Member State or of the European Union or the protection of the data subject;

the right to object to the processing of data: the data subject should have the right to object, on legitimate grounds, to the processing of data relating to him/her. He/she should also have the right to object, on request and free of charge, to the processing of personal data that the controller anticipates being processed for the purposes of direct marketing. He/she should finally be informed before personal data are disclosed to third parties for the purposes of direct marketing, and be expressly offered the right to object to such disclosures;

the confidentiality and security of processing: any person acting under the authority of the controller or of the processor, including the processor himself, who has access to personal data must not process them except on instructions from the controller. In addition, the controller must implement appropriate measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access;

the notification of processing to a supervisory authority: the controller must notify the national supervisory authority before carrying out any processing operation. Prior checks to determine specific risks to the rights and freedoms of data subjects are to be carried out by the supervisory authority following receipt of the notification. Measures are to be taken to ensure that processing operations are publicised and the supervisory authorities must keep a register of the processing operations notified.

Every person shall have the right to a judicial remedy for any breach of the rights guaranteed him by the national law applicable to the processing in question. In addition, any person who has suffered damage as a result of the unlawful processing of their personal data is entitled to receive compensation for the damage suffered.

Transfers of personal data from a Member State to a third country with an adequate level of protection are authorised. However, they may not be made to a third country which does not ensure this level of protection, except in the cases of the derogations listed.

The Directive aims to encourage the drawing up of national and Community codes of conduct intended to contribute to the proper implementation of the national and Community provisions.

Each Member State is to provide one or more independent public authorities responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to the Directive.

A Working Party on the Protection of Individuals with regard to the Processing of Personal Data is set up, composed of representatives of the national supervisory authorities, representatives of the supervisory authorities of the Community institutions and bodies, and a representative of the Commission.

## **LAW ON PERSONAL DATA PROTECTION**

The first law on data protection of the beneficiary country was passed in 1994 but it didn't meet the requirements of Directive 95/46/EC. Under the SAA creation of a legal data protection regime compatible with the EU *acquis* had to be taken up. The result of these endeavours was – as a first step - the Law on Personal Data Protection of 2005 (hereinafter “LPDP”). This law also introduced an independent data protection law enforcement authority, the Directorate for Personal Data Protection. In the first Technical Assistance Project to the Establishment of the “Directorate for the Protection of Personal Data” as an independent supervisory authority (hereinafter “DPDP”), the Law of 2005 was thoroughly analysed in the light of the EU Data Protection Directive.

As a result several proposals for amendments were formulated and in the meantime also implemented by legal act no. 103/08 of the Official Gazette, which entered into force in August 2008.

Further legal action has also been taken to achieve harmonisation with the European data protection *acquis* as was demanded in the Accession Partnership agreement: Having already earlier acceded to Convention 108 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flow, the Parliament enacted a Law on ratification of the Additional

Protocol to this Convention. One of the main topics of this Protocol is the obligation of the contracting states to have a fully independent Data Protection Supervisory Authority in place.

The amendment and revision of the LPDP in 2008 the major aims were fully harmonisation of the national legislation with Directive 95/46/EC of the European Parliament and the Council of the European Union; full harmonisation of the national legislation with the Additional Protocol to the CoE Convention 108/81; extending the definition of “special categories of personal data” by adding philosophical beliefs, genetic data and biometric data; full application of the Law to public security and criminal proceedings, as well as limited application to national security and defence; partial exclusion of the application of the Law, necessary for the purposes of professional journalism and artistic expression; regulating video surveillance; simplification of the notification procedure and complaints handling procedure; regulating in greater detail the manner of performing inspections and increasing the competencies and enhancing the status of the inspectors; harmonisation of the Law on Personal Data Protection with the Law on Misdemeanours; strengthening the independence of the Directorate for Personal Data Protection.

In addition to the amendments of 2008, new amendments were made in 2010. The novelles of the amendments are:

- Specifying the procedure for performing supervision (inspection) over the procession of personal data; Legal determination of the status of the data protection inspectors and harmonization with the Law on Inspection Control (Official Gazette no. 50/10);
- Specifying the provisions on video surveillance;
- Specifying the misdemeanour procedure and provisions for misdemeanour sanctions;
- Strengthening the legal procedures;
- Specifying the obligation of the processing of personal data contained in judicial decisions;
- Specifying the procedure for determination the violation of the right of personal data protection – the procedure will be conducted in accordance with the provisions of the Title IX-and for inspection of the Law on Personal Data Protection by inspectors;
- Specifying the obligations of data controllers for appointment of Data Protection Officer;
- Specifying the procedure for issuing an approval for processing of the special categories of personal data;
- Harmonize the provisions with the Law on E-governance („Official Gazette no. 105/09) and all fines were decreased by 50%.
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## **COMPARATIVE CHART**

For this comparative analysis the text of Directive 95/46/EC has been used as published in the Official Journal of the European Communities No. L 281 of 23 November 1995, and the text of unofficial translation of the Law on Personal Data Protection Law (as amended of 2010) made by the DPDP.

DIRECTIVE 95/46/EC	MACEDONIAN LAW ON PERSONAL DATA PROTECTION (MLPDP)	COMMENTS
DIRECTIVE 95/46/EC	MACEDONIAN LAW ON PERSONAL DATA PROTECTION (MLPDP)	COMMENTS
<b>Article 1</b> <b>Object of the Directive</b>		
<p>1. In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.</p>	<p>Article 1  This Law regulates the protection of personal data as fundamental freedoms and rights of the citizens, and especially the rights to privacy as related to the personal data procession.</p>	<p><b>Acceptable</b></p>
<p>2. Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded under paragraph 1.</p> <p>(proclamation provision)</p>	<p>Article 31  The personal data transfer to other countries may be carried out only if the other country provides adequate degree of personal data protection.  The Directorate shall evaluate the level of protection provided by the other country, on the basis of:</p> <ul style="list-style-type: none"> <li>- the nature of the data;</li> <li>- the purpose and duration of the proposed operation or processing operations;</li> <li>- the country where the data shall be transferred;</li> <li>- governing of the law and</li> <li>- safety measures existing in the said country.</li> </ul> <p><u>The provisions referred to in paragraphs 1 and 2 of this Article shall not be applied to the countries members of the European Union and the countries members of the European Economic Space.</u></p> <p>If the European Commission shall determine that the third country does not provide proper level of protection regarding the transfer or category of personal data transfer, after receiving the notification in accordance with Article 27 of this Law, the Directorate shall issue a determination for prohibition of personal data transfer.</p> <p>If the Directorate shall assess that the determined third country fails to provide proper level of protection regarding the personal data transfer, it shall immediately notify the European Commission and impose the controller to freeze the data</p>	<p><b>Acceptable</b></p> <p>Article 31 deals with specific details of personal data transfer to third countries. Paragraph 3 exempts EU member state and states that belong to the European Economic Area from the scope of application of Article 31. Accordingly, personal data may be disclosed to any recipient in one of the 27 EU member states and in the EEA states.</p>

	<p>transfer.</p> <p>If the European Commission shall determine that the third country towards which the personal data transfer was aimed pursuant to paragraph 5 of this Article, provides proper level of protection, the Directorate shall notify the controller for recalling the freezing of the transfer, implemented pursuant to paragraph 5 of this Article.</p> <p>If the European Commission shall determine that the third country towards which the personal data transfer was aimed, pursuant to paragraph 5 of this Article, fails to provide proper level of protection, the Directorate shall issue a determination for the controller to prohibit the data transfer towards that country.</p>	
<p><b>Article 2</b> <b>Definitions</b> For the purposes of this Directive:</p>	<p>Article 2 Certain terms used in this Law shall have the following meanings:</p>	
<p>(a) 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;</p>	<p>1. Personal data is each information pertaining to an identified or identifiable natural person, the identifiable entity being an entity whose identity can be determined directly or indirectly, especially as according to the unique register number of the citizen or on the basis of one or more characteristics, specific for his/her physical, physiological, mental, economic, cultural or social identity;</p>	<p><b>Acceptable</b></p>
<p>(b)'processing of personal data' ('processing') shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;</p>	<p>2. "Personal data processing" is every operation or a sum of operations performed on personal data, automatically or otherwise, such as: collection, recording, organizing, storing, adjusting, or altering, withdrawing, consulting, using, publishing through transmitting, revealing or making otherwise available, aligning, combining, blocking, deleting or destroying;</p>	<p><b>Acceptable</b></p>
<p>(c) 'personal data filing system' ('filing system') shall mean any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;</p>	<p>3. "Personal Data Collection" is a structured group of personal data available as per specific criteria, regardless whether it is centralized, decentralized or dispersed on a functional or a geographical basis.</p>	<p><b>Acceptable</b></p>
<p>(d) 'controller' shall mean the</p>	<p>5. "Controller of the Personal Data</p>	<p><b>Acceptable</b></p>

natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law;	Collection” shall be any natural person or legal entity, a state administration body or other body, who, independently or together with others, determines the purposes and the ways of personal data processing (hereinafter: controller). When the purposes and the ways of personal data processing are determined by law or any other regulation, the same law, i.e. regulation determines the controller or the special criteria for his/her selection	
(e) 'processor' shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;	6. “Personal Data Collection Processor” shall be a natural person or a legal entity or a legally authorized state administration body processing the personal data on the behalf of the controller;	<b>Acceptable</b>
(f) 'third party' shall mean any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;	7. “Third Party”, shall be any natural person or legal entity, a state administration body or other body, which is not a personal data subject, a controller, a Personal Data Collection Processor or any person who, under a direct authorization by the controller or by the Personal Data collection processor is authorized to process the data;	<b>Acceptable</b>
(g) 'recipient' shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients;	8. “User” shall be any natural person or a legal entity, a state administration body or other body, to whom the data are disclosed.	<b>Acceptable</b> <i>(the second half of this provision is not transposed)</i>
(h) 'the data subject's consent' shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.	9. « Consent of the personal data subject” shall be freely and explicitly given statement of will, of the personal data subject whereby (s)he agrees to the processing of his/her personal data for previously determined purposes;	<b>Acceptable</b> <i>(the “freely and specific indication” is not the same as “freely and explicitly given statement”)</i>
<b>DIRECTIVE 95/46/EC</b>	<b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b>	<b>COMMENTS</b>
<b>Article 3 Scope</b> 1.This Directive shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data	Article 3 This law shall be applied: - to entirely or partly automated personal data processing and - to other processing of the personal data	<b>Acceptable</b>

which form part of a filing system or are intended to form part of a filing system.	which are part of an existing collection of personal data or are intended to be part of a collection of a personal data.	
2. This Directive shall not apply to the processing of personal data:		
- in the course of an activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union and in any case to processing operations concerning public security, defence, State security (including the economic well-being of the State when the processing operation relates to State security matters) and the activities of the State in areas of criminal law,	Article 4 paragraph 2 The provisions referred to in chapters VI, VII and VIII of this Law shall not be applied on the personal data processing for the purpose of protecting the interests of state security and defence of the Republic of Macedonia.	<b>Acceptable</b>
-by a natural person in the course of a purely personal or household activity.	Article 4 paragraph 1: The provisions of this Law shall not be applied on the personal data processing provided by natural persons, exclusively due to personal activities or home activities.	<b>Acceptable</b>
<b>DIRECTIVE 95/46/EC</b>	<b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b>	<b>COMMENTS</b>
<b>Article 4 National law applicable</b>		
1. Each Member State shall apply the national provisions it adopts pursuant to this Directive to the processing of personal data where: (a) the processing is carried out in the context of the activities of an establishment of the controller on the territory of the Member State; when the same controller is established on the territory of several Member States, he must take the necessary measures to ensure that each of these establishments complies with the obligations laid down by the national law applicable;	Article 7-b paragraph 1 : The provisions of this Law shall be applied to the processing of personal data if the controller is established in the Republic or has his/her authorized representative with head office in the Republic of Macedonia.	<b>Acceptable</b>
(b) the controller is not established on the Member State's territory, but in a place where its national law applies by virtue of international public law;	Article 7-b paragraph 4 : The provisions of this Law shall be also applied when the controller shall be established on the territory of another state where the national law of the Republic of Macedonia is applied on the basis of international public law.	<b>Acceptable</b>

(c) the controller is not established on Community territory and, for purposes of processing personal data makes use of equipment, automated or otherwise, situated on the territory of the said Member State, unless such equipment is used only for purposes of transit through the territory of the Community.	Article 7-b paragraph 2: The provisions of this Law shall be also applied if the controller is not established in the Republic or does not have his/her authorized representative with head office in the Republic of Macedonia, but the equipment he/she uses for personal data procession is located in the Republic of Macedonia, unless the equipment is used only for transit through the territory of the Republic of Macedonia.	<b>Acceptable</b>
2. In the circumstances referred to in paragraph 1 (c), the controller must designate a representative established in the territory of that Member State, without prejudice to legal actions which could be initiated against the controller himself.	Article 7-b paragraph 3: In the case referred to in paragraph 2 of this Article, the controller shall be obliged to appoint an official representative with head office in the Republic of Macedonia, who shall be responsible for personal data protection in accordance with this Law.	<b>Acceptable</b>
<b>DIRECTIVE 95/46/EC</b>	<b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b>	<b>COMMENTS</b>
<b>Article 6</b>		
1. Member States shall provide that personal data must be:	Article 5 Personal data shall be:	
(a) processed fairly and lawfully;	- processed justly and pursuant to law;	<b>Acceptable</b>
(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards;	- collected for specific, clear and legally determined purposes and processed in a manner pursuant to those purposes. Further data processing for historic, scientific or statistical research shall not be considered as not being in compliance with the primary purposes for the data collection, provided that the appropriate protection measures have been undertaken in accordance with law;	<b>Acceptable</b>
(c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;	- appropriate, relevant and not too extensive in relation to the purposes for collecting and processing;	<b>Acceptable</b> <i>(Directive requires that data shall not be excessive. The term "too extensive" is ambiguous)</i>
(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;	- accurate, complete and, where necessary, updated, whereby all proper measures for deleting and correcting the inaccurate or incomplete data shall be undertaken, considering the purposes for which they have been collected or processed	<b>Acceptable</b>
(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are	- stored in a form which enables identification of the personal data subject, not longer than necessary to meet the purposes for which the data have been	<b>Acceptable</b>

<p>further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.</p>	<p>collected for further processing.</p> <p>Article 5 paragraph 2: After expiration of the preservation period, the personal data may only be processed for historical, scientific and statistic purposes. The policy for protection of the privacy, personal and family life of the personal data subject from their unauthorized use, shall be applied when personal data are used for the purposes referred to in paragraph 2 of this Article, and in as short term as possible the data shall be made anonymous.</p>	
<p>. It shall be for the controller to ensure that paragraph 1 is complied with.</p>	<p>The controller shall be responsible for the quality of the personal data in accordance with paragraph 1 of this Article.</p>	<p><b>Acceptable</b></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 7</b></p>	<p><b>Article 6</b></p>	
<p>Member States shall provide that personal data may be processed only if:</p>	<p>Personal data processing may also be performed:</p>	
<p>(a) the data subject has unambiguously given his consent; or</p>	<p>- upon previously obtained consent of the personal data subject;</p>	<p><b>Acceptable-partially</b> <i>(This provision should specify that the consent should be given unambiguously).</i></p>
<p>(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or</p>	<p>- for executing the agreement where the personal data subject is contracting party or upon the request of the personal data subject prior to his/her accepting of the agreement;</p>	<p><b>Acceptable</b></p>
<p>(c) processing is necessary for compliance with a legal obligation to which the controller is subject; or</p>	<p>- for fulfilling the legal obligation of the controller;</p>	<p><b>Acceptable</b></p>
<p>(d) processing is necessary in order to protect the vital interests of the data subject; or</p>	<p>- for protection of the life or the vital interests of the personal data subject;</p>	<p><b>Acceptable</b></p>
<p>(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or</p>	<p>- for exercising activities of public interest or an official authorization of the controller or data being revealed to a third party</p>	<p><b>Acceptable</b></p>
<p>(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where</p>	<p>- fulfilment of the legitimate rights of the controller, of a third party or a person to whom the data have been disclosed, unless the freedom and the rights of the personal data subject shall prevail such interests.</p>	<p><b>Acceptable</b></p>

such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1 (1).		
<b>DIRECTIVE 95/46/EC</b>	<b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b>	<b>COMMENTS</b>
<b>Article 8 The processing of special categories of data</b>	<b>Article 2 paragraph 10</b>	
1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.	<p>“Special categories of personal data” shall be personal data revealing the racial or ethnic origin, the political views, religious philosophical or other beliefs, membership in a trade union and data relating to the health condition of the people, including genetic data, biometric data or data referring to the sexual life;</p> <p><b>Article 8</b> “Processing of special categories of personal data is forbidden.”</p>	<p><b>Acceptable</b> <i>(other beliefs is not determined in Directive)</i></p> <p><i>(genetic and biometric data are not determined by Directive. But the state may extend the list of sensitive data)</i></p>
2. Paragraph 1 shall not apply where:	<b>Article 8 paragraph 2</b> “As an exception to Paragraph 1 of this Article the processing of special categories of personal data may be performed:”	
(a) the data subject has given his explicit consent to the processing of those data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his consent; or	<b>Article 8 paragraph 2 line 1</b> - on the basis of an explicit consent of the personal data subject given for processing such data, unless a law envisages that the prohibition for processing such data may not be withdrawn by a written consent of the personal data subject;	<b>Acceptable</b>
(b) processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment law in so far as it is authorized by national law providing for adequate safeguards; or	<b>Article 8 paragraph 2 line 2</b> - if it is necessary for carrying out specific rights and obligations of the controller in the field of labour law, to the extent and with adequate guarantees determined by the laws in this area;	<b>Acceptable</b>
(c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent; or	<b>Article 8 paragraph 2 line 3</b> - when it is necessary for the protection of the vital interests of the personal data subject or of other person physically disabled to give consent or lacking the capacity to give consent;	<b>Acceptable</b>
(d) processing is carried out in the course of its legitimate activities with appropriate guarantees by a foundation, association or any other	<b>Article 8 paragraph 2 line 4</b> - if the processing is carried out in the framework of the activities of institutions, associations or any non-profit institutions	<b>Acceptable</b>

<p>non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects; or</p>	<p>for political, religious, trade-union or other purpose, provided that the data processing refers exclusively to their members or natural persons with whom regular contact regarding their aims are held, such data, as well, shall not be disclosed to third parties without the consent of the personal data subject;</p>	
<p>(e) the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims.</p>	<p><b>Article 8 paragraph 2 line 5</b> - When the processing refers to data which the personal data subject has publicly disclosed; <b>Article 8 paragraph 2 line 7</b> - when it is necessary for the purpose of acquiring, exercising and protecting the rights of the personal data subject in a procedure with competent bodies;</p>	<p><b>Acceptable</b></p>
<p>3. Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject under national law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.</p>	<p><b>Article 8 paragraph 2 line 8</b> - If it is needed for the purposes of medical prevention, diagnosis, treatment or management with a public health institution and is carried out by a person whose profession is to provide medical protection under oath of secrecy to the data revealed to him/her during the performance of his/her profession.</p>	<p><b>Acceptable</b></p>
<p>4. Subject to the provision of suitable safeguards, Member States may, for reasons of substantial public interest, lay down exemptions in addition to those laid down in paragraph 2 either by national law or by decision of the supervisory authority.</p>	<p><b>Article 8 paragraph 2 line 9</b> - proper measures for protection due to exercising activities of public interest determined by law or decision of the Directorate.</p>	<p><b>Lack of full transposition of this provision of the Directive</b> <i>As requested by the Directive, exceptions to this provision may only take place for reasons of <u>substantial public interest</u> and when <u>suitable safeguards</u> are introduced. This exception in MLPDP is too broad, so that it is not always certain that an important public interest exists.</i></p>
<p>5. Processing of data relating to offences, criminal convictions or security measures may be carried out only under the control of official authority, or if suitable specific safeguards are provided under national law, subject to derogations which may be granted by the Member State under national provisions providing suitable specific safeguards. However, a complete register of criminal convictions may</p>	<p><b>Article 7</b> Personal data processing that refers to criminal acts, pronounced sentences, alternative measures and security measures for committed criminal acts may be performed by pursuant to law.</p>	<p><b>Acceptable</b></p>

be kept only under the control of official authority.		
Member States may provide that data relating to administrative sanctions or judgements in civil cases shall also be processed under the control of official authority.	<b>Article 7-a</b> The processing of the personal data contained in judicial decisions shall be conducted under the conditions determined by law and in the manner prescribed by the regulations adopted on the basis of that Law.	<b>Lack of full transposition of this provision of the Directive</b> <i>The provision in the MLPDP only refers to personal data contained in judicial decisions but it is missing processing of personal data relating to administrative sanctions. Also it is missing that processing will be under the control of official authority. But this provision of Directive is not mandatory to be implemented.</i>
6. Derogations from paragraph 1 provided for in paragraphs 4 and 5 shall be notified to the Commission.		<i>This provision is not relevant for the R. of Macedonia</i>
7. Member States shall determine the conditions under which a national identification number or any other identifier of general application may be processed.	<b>Article 9</b> The personal identification number of the citizen may only be processed: - upon prior explicit consent of the personal data subject; - for the purpose of fulfilling rights and obligations of the personal data subject or controller, determined by law and - other cases determined by law. The controller shall be obliged to ensure the personal registration number of the citizen not to be unnecessarily visible, printed or taken over from personal data collection.	<b>Acceptable</b>
<b>DIRECTIVE 95/46/EC</b>	<b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b>	<b>COMMENTS</b>
<b>Article 9</b> <b>Processing of personal data and freedom of expression</b>		
Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression.	<b>Article 4-a</b> The provisions referred to in Article 6, 7, 11, 12, 13, 14, 16, 22 and from 27 to 36 of this Law shall not be applied on processing the personal data performed exclusively for the purpose of: - literature and art expressing and - professional journalism in accordance with the ethical rules of this profession.  The provisions of this Law shall not be applied to processing of personal data carried out for the purpose of professional journalism, only in the case when the public interest prevails over the private interest of the subject of personal data.	<b>Acceptable</b>

DIRECTIVE 95/46/EC	MACEDONIAN LAW ON PERSONAL DATA PROTECTION	COMMENTS
<p><b>Article 10</b> <b>Information in cases of collection of data from the data subject</b></p>		
<p>Information in cases of collection of data from the data subject</p> <p>Member States shall provide that the controller or his representative must provide a data subject from whom data relating to himself are collected with at least the following information, except where he already has it:</p> <p>(a) the identity of the controller and of his representative, if any;</p> <p>(b) the purposes of the processing for which the data are intended;</p> <p>(c) any further information such as</p> <ul style="list-style-type: none"> <li>- the recipients or categories of recipients of the data,</li> <li>- whether replies to the questions are obligatory or voluntary, as well as the possible consequences of failure to reply,</li> <li>- the existence of the right of access to and the right to rectify the data concerning him</li> </ul> <p>in so far as such further information is necessary, having regard to the specific circumstances in which the data are collected, to guarantee fair processing in respect of the data subject</p>	<p><b>Article 10</b></p> <p>When the data are collected from the personal data subject, the latter must be informed on:</p> <ul style="list-style-type: none"> <li>- the identity of the controller and of its authorized representative in the Republic of Macedonia, if any;</li> <li>- the purposes of the processing;</li> <li>- the users or categories of users of personal data;</li> <li>- the compulsoriness of responding to questions;</li> <li>- possible consequences of not responding and</li> <li>- existence of the right to access and the right to correct his/her personal data.</li> </ul> <p>The controller shall not inform the personal data subject if (s)he has already been introduced to the matters listed in paragraph 1 lines 1 to 6 of this Article.</p>	<p><b>Acceptable</b></p>
DIRECTIVE 95/46/EC	MACEDONIAN LAW ON PERSONAL DATA PROTECTION	COMMENTS
<p><b>Article 11</b> <b>Information where the data have not been obtained from the data subject</b></p>		
<p>1. Where the data have not been obtained from the data subject, Member States shall provide that the controller or his representative must at the time of undertaking the recording of personal data or if a disclosure to a third party is envisaged, no later than the time when the data are first disclosed provide the data subject with at</p>	<p><b>Article 11 Paragraph 1</b></p> <p>When the data are not collected from the personal data subject, the controller shall, at the time of recording the personal data or if disclosure of the personal data to a third party is envisaged, no later than the time when the data are firstly disclosed, inform the personal data subject on:</p> <ul style="list-style-type: none"> <li>- the identity of the controller and of</li> </ul>	<p><b>Acceptable</b></p>

<p>least the following information, except where he already has it:</p> <p>(a) the identity of the controller and of his representative, if any;</p> <p>(b) the purposes of the processing;</p> <p>(c) any further information such as</p> <ul style="list-style-type: none"> <li>- the categories of data concerned,</li> <li>- the recipients or categories of recipients,</li> <li>- the existence of the right of access to and the right to rectify the data concerning him in so far as such further information is necessary, having regard to the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.</li> </ul>	<p>his/her authorized representative in the Republic of Macedonia, if any;</p> <ul style="list-style-type: none"> <li>- the purposes for the processing;</li> <li>- the data categories;</li> <li>- the users or categories of users of the personal data and</li> <li>- the existence of the right to access and the right to correct the data referring to the personal data subject.</li> </ul> <p>The controller shall not inform the personal data subject if (s)he has already been introduced to the matters referred to in paragraph 1 lines 1 to 5 of this Article.</p>	
<p>2. Paragraph 1 shall not apply where, in particular for processing for statistical purposes or for the purposes of historical or scientific research, the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by law. In these cases Member States shall provide appropriate safeguards.</p>	<p><b>Article 11 Paragraph 3</b></p> <p>As an exception to Paragraph 1 of this Article, the controller shall not have an obligation to inform the personal data subject about the processing of personal data for historical, scientific and statistic purposes, if:</p> <ul style="list-style-type: none"> <li>- the same is impossible or quests for disproportionate effort or costs or</li> <li>- the collection or disclosure of the personal data has been determined by law</li> </ul>	<p><b>Acceptable</b></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 12</b> <b>Right of access</b></p>		
<p>Member States shall guarantee every data subject the right to obtain from the controller:</p>	<p><b>Article 12 Paragraph 1</b></p> <p>The personal data subject may request from the controller to inform him/her:</p>	<p><b>Acceptable</b></p>
<p>a) without constraint at reasonable intervals and without excessive delay or expense:</p> <ul style="list-style-type: none"> <li>- confirmation as to whether or not data relating to him are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of</li> </ul>	<p><b>Article 12</b></p> <p>The personal data subject may request from the controller to inform him/her:</p> <ul style="list-style-type: none"> <li>- whether his/her personal data are being processed;</li> <li>- on the purposes and legal base for personal data processing and the users or categories of users to whom the personal data are being disclosed;</li> </ul>	<p><b>Acceptable</b></p>

<p>recipients to whom the data are disclosed,</p> <ul style="list-style-type: none"> <li>- communication to him in an intelligible form of the data undergoing processing and of any available information as to their source,</li> <li>- knowledge of the logic involved in any automatic processing of data concerning him at least in the case of the automated decisions referred to in Article 15 (1);</li> </ul>	<ul style="list-style-type: none"> <li>- for personal data in connection to the personal data subject and the source of that data;</li> <li>- the logic of automatic processing, in case a decision has been made on the automatic processing affecting the personal data subject.</li> </ul> <p>The controller shall be obliged to respond to the personal data subject referred to in paragraph 1 of this Article, within 15 days as of the day of accepting the request.</p> <p>Should the controller have responded to the request of the personal data subject referred to in paragraph 1 of this Article, (s)he shall not have the obligation to respond again to a same or similar request of the said subject, if in the meantime changes in his/her personal data have not occurred, except if six months have passed as of the day of submitting the prior request to the new request.</p>	
<p>(b) as appropriate the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data;</p>	<p><b>Article 14 Paragraphs 1 and 2</b></p> <p>Upon the request of the personal data subject, the controller is obliged to supplement, amend, delete or prevent the use of the personal data, if they are incomplete, incorrect or not updated and if their processing is not in conformity with the provisions of this Law.</p> <p>In case when the controller shall determine that the personal data are incomplete, incorrect or not updated, (s)he is obliged to supplement, amend or delete them, regardless of whether the personal data subject has submitted a request for amending the personal data.</p>	<p><b>Acceptable</b></p>
<p>(c) notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (b), unless this proves impossible or involves a disproportionate effort.</p>	<p><b>Article 14 Paragraph 3</b></p> <p>For the performed supplement, amendment or deletion of personal data, as pursuant to the paragraph 2 of this Article, the controller shall be obliged within 30 days from the day of accepting the request, to inform in written the personal data subject, the personal data users or third parties to whom the personal data have been disclosed to, unless it is not possible or it quests for disproportional effort or costs.</p>	<p><b>Acceptable</b></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 13 Exemptions and restrictions</b></p>		
<p>1. Member States may adopt</p>	<p><b>Article 15 paragraph 1</b></p>	

legislative measures to restrict the scope of the obligations and rights provided for in Articles 6 (1), 10, 11 (1), 12 and 21 when such a restriction constitutes a necessary measures to safeguard:	The rights of the personal data subject, determined in the provisions of Articles 10, 11, 12, 13 and 14 of this Law, may be restricted in special cases when their application shall endanger the fulfilment of the obligation of the controller envisaged by law, in regard to:	
(a) national security;	<b>Article 15 paragraph 1 line 1</b> - for protection of the security and defence of the state,	<b>Acceptable</b>
(b) defence;	<b>Article 15 paragraph 1 line 1</b>	
(c) public security;	<b>Article 15 paragraph 1 line 1</b>	
(d) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions;	<b>Article 15 paragraph 1 line 2 and 3</b> - detection and prosecution of the perpetrators of criminal acts; - protection from infringement of ethic rules of a certain profession;	<b>Acceptable</b>
(e) an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters;	<b>Article 15 paragraph 1 line 4 and 5</b> - protection of important economic or financial interests of the state, - protection of important economic or financial interests of the European Union and	<b>Acceptable</b>
(f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in (c), (d) and (e);	<i>No adequate provision</i>	<b>Missing in the MLPDP – not obligatory</b> <i>(it is recommended as example as: "the provisions .... shall not apply to processing of personal data necessary to fulfil obligations of controller provided by special Act to ensure exercise of control, supervision, surveillance and regulation performed by public authority in case referred to ...")</i>
(g) the protection of the data subject or of the rights and freedoms of others.	<b>Article 15 paragraph 1 line 6</b>  - protection of rights and freedoms of the personal data subject or of the rights of the natural persons.	<b>Acceptable</b>
2. Subject to adequate legal safeguards, in particular that the data are not used for taking measures or decisions regarding any particular individual, Member States may, where there is clearly no risk of breaching the privacy of the data subject, restrict by a legislative measure the rights provided for in Article 12 when data are processed solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the	<b>Article 16</b>  The controller shall not act upon the request of the personal data subject as pursuant to Article 12 of this Law, when authorized in accordance with law and if the personal data are processed exclusively for the scientific research purposes, or if they have been collected exclusively for defined statistical purposes and are kept for a period not exceeding the one necessary for the sole purpose of creating statistical data.	<b>Acceptable</b>

sole purpose of creating statistics.		
<b>DIRECTIVE 95/46/EC</b>	<b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b>	<b>COMMENTS</b>
<b>Article 14 The data subject's right to object</b>		
Member States shall grant the data subject the right:		
(a) at least in the cases referred to in Article 7 (e) and (f), to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, save where otherwise provided by national legislation. Where there is a justified objection, the processing instigated by the controller may no longer involve those data;	<b>Article 13</b>  When the personal data are being processed in accordance with Article 6 paragraph 1 lines 5 and 6 of this Law, the personal data subject shall have the right to request for freezing his/her personal data processing.  Should the request in the cases referred to in paragraph 1 of this Article be grounded, the controller shall be obliged to freeze further processing of the personal data.	<b>Acceptable</b>
(b) to object, on request and free of charge, to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing, or to be informed before personal data are disclosed for the first time to third parties or used on their behalf for the purposes of direct marketing, and to be expressly offered the right to object free of charge to such disclosures or uses.	<b>Article 13-a paragraph 1</b>  The personal data processing for the purpose of direct marketing shall be allowed only if the personal data are being processed in accordance with Article 6 paragraph 1 of this Law, unless otherwise determined by other law.	<b>Acceptable</b>
Member States shall take the necessary measures to ensure that data subjects are aware of the existence of the right referred to in the first subparagraph of (b).	<b>Article 13-a paragraph 2</b>  The personal data subject shall have the right, at any period, for free and by using simple means to withdraw the consent for processing his/her personal data for direct marketing.	<b>Acceptable</b>
<b>DIRECTIVE 95/46/EC</b>	<b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b>	<b>COMMENTS</b>
<b>Article 15 Automated individual decisions</b>		
1. Member States shall grant the right to every person not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability,	<b>Article 22 paragraph 1</b>  Court or other decision which result with legal effect against a person or significantly concerns the said person, cannot be based solely on automatic processing of data intended for defining the profile or assessing certain aspects of his/her personality without prior confirmation by an authorized person.	<b>Acceptable</b>

conduct, etc.		
2. Subject to the other Articles of this Directive, Member States shall provide that a person may be subjected to a decision of the kind referred to in paragraph 1 if that decision:	<b>Article 22 paragraph 2</b> The Paragraph 2 of this Article shall not apply, if the decision has been adopted:	
(a) is taken in the course of the entering into or performance of a contract, provided the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or that there are suitable measures to safeguard his legitimate interests, such as arrangements allowing him to put his point of view; or	<b>Article 22 paragraph 2 line 1</b> - during conclusion or fulfilment of a contract, while the person has been enabled to expose his/her opinion or the decision has been reached in accordance with the request of the said person or	<b>Acceptable</b>
(b) is authorized by a law which also lays down measures to safeguard the data subject's legitimate interests.	<b>Article 22 paragraph 2 line 2</b> - in accordance to a separate law.	<b>Lack of full transposition of this provision of the Directive</b> <i>MLPDP allows that data subject may be subjected to an automated decision when it is in accordance to a separate law. But the Directive requires set up suitable measures to safeguard data subject's legitimate interests; the automated decision is authorised by a law which also lays down measures to safeguard the data subject's legitimate interests. It is necessary to introduce a factor concerning safeguards to this provision of Macedonian Law.</i>
<b>Article 16</b> <b>Confidentiality of processing</b>	<b>V. SECRECY AND PROTECTION OF PERSONAL DATA PROCESSING</b>	
Any person acting under the authority of the controller or of the processor, including the processor himself, who has access to personal data must not process them except on instructions from the controller, unless he is required to do so by law.	<b>Article 24</b> Only the person with authorization from the controller or processor, including the processor himself, may provide personal data processing.  The person referred to in paragraph 1 of this Article shall mandatory: - be introduced with the principles for personal data protection prior to accessing the personal data; - perform personal data processing in accordance with the directions received from the controller, unless otherwise regulated with law and - preserve the personal data as confidential, as well as the measures for their protection.	<b>Acceptable</b>

DIRECTIVE 95/46/EC	MACEDONIAN LAW ON PERSONAL DATA PROTECTION	COMMENTS
<p><b>Article 17</b> <b>Security of processing</b></p>		
<p>Member States shall provide that the controller must implement appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.</p> <p>Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.</p>	<p><b>Article 23</b></p> <p>In order to provide secrecy and protection of the processing of the subject's personal data, the controller and processor have to apply proper technical and organizational measures for protection of accidental or illegal damaging of the personal data, or their accidental loss, change, unauthorized disclosing or approach, especially when the processing includes transmission of data over a network and protection of any kind of illegal forms of processing.</p> <p>The personal data referred to in Article 8 and 9 of this Law, may be transferred via electronic telecommunications network only if specially protected by proper methods, therefore not being readable in the transfer process.</p> <p>The measures referred to in paragraph 1 of this Article have to provide degree of protection of the personal data appropriate to the risk during the processing and the nature of the data being processed.</p> <p>The controller and processor shall be obliged to adopt and apply documentation containing description of the technical and organizational measures for providing secrecy and protection of the personal data processing.</p> <p>The director of the Directorate shall prescribe the contents of the documentation referred to in paragraph 4 of this Article, as well as the application of proper technical and organizational measures supposed to be undertaken in order to provide secrecy and protection of the personal data processing.</p>	<p><b>Acceptable</b></p>
<p>2. The Member States shall provide that the controller must, where processing is carried out on his behalf, choose a processor providing sufficient guarantees in respect of the technical security measures and organizational measures governing the processing to be carried out, and must ensure compliance with those measures.</p>	<p><b>Article 26 paragraph 1</b></p> <p>The controller may transfer matters of his/her scope of work, related to the personal data processing, to the processor.</p>	<p><b>Lack of full transposition of this provision of the Directive</b></p> <p><i>The Directive requires that the data controller must ensure compliance of security and organisational measures introduced by the processor. In MLPDP the controller has no such an obligation when the processor is chosen. Amendment is necessary.</i></p>

<p>3. The carrying out of processing by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:</p> <ul style="list-style-type: none"> <li>- the processor shall act only on instructions from the controller,</li> <li>- the obligations set out in paragraph 1, as defined by the law of the Member State in which the processor is established, shall also be incumbent on the processor.</li> </ul>	<p><b>Article 26 paragraph 2</b></p> <p>The internal rights and obligations of the controller and processor have to be regulated by a contract, in written form, obligatory containing:</p> <ul style="list-style-type: none"> <li>- the obligation of the processor to act solely in accordance with directions received from the controller and</li> <li>- the obligation as well for the processor to undertake technical and organizational measures to provide secrecy and protection of the personal data processing.</li> </ul> <p>In the contact referred to in paragraph 2 of this Article the manner of testing of the procedures of the processor during the processing of the personal data shall be mandatory determined.</p>	<p><b>Lack of full transposition of this provision of the Directive</b></p> <p><i>The Directive states “The carrying out of processing by way of a processor must be governed by a contract or legal act binding the processor to the controller”. MLPDP introduced only one of two possibilities – “contract”. Amendment concerning possibility to process the data by processor not only based on a contract but also “legal act binding the processor to the controller” is recommended.</i></p>
<p>4. For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to the measures referred to in paragraph 1 shall be in writing or in another equivalent form.</p>	<p>Article 26 paragraph 2</p> <p>The internal rights and obligations of the controller and processor have to be regulated by a contract, in written form, obligatory containing:</p>	<p><b>Acceptable</b></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 18</b> <b>Obligation to notify the supervisory authority</b></p>		
<p>1. Member States shall provide that the controller or his representative, if any, must notify the supervisory authority referred to in Article 28 before carrying out any wholly or partly automatic processing operation or set of such operations intended to serve a single purpose or several related purposes.</p>	<p>Article 27 paragraph 1</p> <p>Prior to initiating the personal data processing, the controller shall be obliged to notify the Directorate.</p>	<p><b>Acceptable</b></p>
<p>2. Member States may provide for the simplification of or exemption from notification only in the following cases and under the following conditions:</p>	<p><b>Article 28</b></p> <p>The controller shall not be obliged to notify the Directorate in accordance with Article 27 of this Law, if:</p>	<p><b>Acceptable</b></p>
<ul style="list-style-type: none"> <li>- where, for categories of processing operations which are unlikely, taking</li> </ul>	<ul style="list-style-type: none"> <li>- the personal data are part of the publicly available collections based on a</li> </ul>	<p><b>Acceptable</b></p> <p><i>It should be pointed out that the</i></p>

<p>account of the data to be processed, to affect adversely the rights and freedoms of data subjects, they specify the purposes of the processing, the data or categories of data undergoing processing, the category or categories of data subject, the recipients or categories of recipient to whom the data are to be disclosed and the length of time the data are to be stored, and/or</p> <ul style="list-style-type: none"> <li>- where the controller, in compliance with the national law which governs him, appoints a personal data protection official, responsible in particular: <ul style="list-style-type: none"> <li>- for ensuring in an independent manner the internal application of the national provisions taken pursuant to this Directive</li> <li>- for keeping the register of processing operations carried out by the controller, containing the items of information referred to in Article 21 (2),</li> </ul> </li> </ul> <p>thereby ensuring that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations.</p>	<p>law;</p> <ul style="list-style-type: none"> <li>- the personal data collection refers to at most ten employees with the controller or</li> <li>- the processing refers to personal data of member of associations founded for political, philosophical, religious or trade-union purposes.</li> </ul>	<p><i>possibility to use the Directive's exemptions from notification obligation was not followed. Nevertheless, lack of exemptions should be recognised as partially disharmonic.</i></p> <p><i>Simplification of notification is not mandatory provision. But important simplification is not to notify the processing if data controller appointed "Data protection officer" position in accordance with LPDP.</i></p> <p><i>Simplification and exemption from notification obligation is important decrement of administrative burden.</i></p>
<p>3. Member States may provide that paragraph 1 does not apply to processing whose sole purpose is the keeping of a register which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person demonstrating a legitimate interest.</p>	<p>Not transposed</p>	
<p>4. Member States may provide for an exemption from the obligation to notify or a simplification of the notification in the case of processing operations referred to in Article 8 (2) (d).</p>	<p>Not transposed</p>	
<p>5. Member States may stipulate that certain or all non-automatic processing operations involving personal data shall be notified, or provide for these processing operations to be subject to simplified notification.</p>	<p>Not transposed</p>	
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 19</b></p>		

Contents of notification		
<p>1. Member States shall specify the information to be given in the notification. It shall include at least:</p> <p>(a) the name and address of the controller and of his representative, if any;</p> <p>(b) the purpose or purposes of the processing;</p> <p>(c) a description of the category or categories of data subject and of the data or categories of data relating to them;</p> <p>(d) the recipients or categories of recipient to whom the data <u>might be disclosed</u>;</p> <p>(e) proposed transfers of data to third countries;</p> <p>(f) a general description allowing a preliminary assessment to be made of the appropriateness of the measures taken pursuant to Article 17 to ensure security of processing.</p>	<p><b>Article 27</b></p> <p>The controller shall keep records of each personal data collection which shall contain:</p> <ol style="list-style-type: none"> <li>1) the name of the personal data collection,</li> <li>2) name i.e. the personal name of the controller and his/her seat or address, as well as the name and the address of his/her representative, if any,</li> <li>3) purpose or purposes of the processing,</li> <li>4) legal basis for the establishment of a personal data collection;</li> <li>5) category or categories of the personal data subjects and personal data i.e. categories referring to him/her or them;</li> <li>6) the users or the categories of users to whom the personal data are disclosed;</li> <li>7) the period allowed for personal data storage and usage;</li> <li>8) transfer of personal data to other states;</li> <li>9) description of the measures taken in view of the personal data protection and their processing.</li> </ol>	<p><b>Lack of full transposition of this provision of the Directive</b></p> <p><i>Art. 27 point 6 introduces a notification obligation for the data controller to keep and inform DPDP about the users or the categories of users to whom the <u>personal data are disclosed</u>. According to the art. 19 d) the data controller should notify Data Protection Authority about the recipients or categories of recipient to whom the data <u>might be disclosed</u>. Macedonian controller is obliged to notify only current state whereas it is very important for supervisory authority to collect also information concerning possible disclosure. It will be necessary to amend this part of legislation with this regard.</i></p>
<p>2. Member States shall specify the procedures under which any change affecting the information referred to in paragraph 1 must be notified to the supervisory authority.</p>	<p>Article 27 paragraphs 4 and 5</p> <p>The controller shall be obliged to notify the Directorate for any change contained in the notification referred to in paragraph 2 of this Article, within 30 days as of the day of the change.</p> <p>The director of the Directorate shall prescribe the form and content of the notification Form, as well as the manner of notifying referred to in paragraph 1 of this Article.</p>	<p><b>Acceptable</b></p> <p><i>The MLPDP introduces the obligation for the controllers to notify the Supervisory body for any change contained in the notification. The specification of the procedure for notification as stated in paragraph 2 in this article is prescribe by the director with a sub legal binding document which is obligatory for the data controllers and processors.</i></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 20</b> <b>Prior checking</b></p>		
<p>1. Member States shall determine the processing operations likely to present specific risks to the rights and freedoms of data subjects and shall check that these processing operations are examined prior to</p>	<p><b>Article 29</b></p> <p>Solely upon previously obtained approval from the Directorate the following personal data shall be processed:</p> <ul style="list-style-type: none"> <li>- personal identification number of the</li> </ul>	<p><b>Acceptable</b></p>

<p>the start thereof.</p> <p>2. Such prior checks shall be carried out by the supervisory authority following receipt of a notification from the controller or by the data protection official, who, in cases of doubt, must consult the supervisory authority.</p> <p>3. Member States may also carry out such checks in the context of preparation either of a measure of the national parliament or of a measure based on such a legislative measure, which define the nature of the processing and lay down appropriate safeguards.</p>	<p>personal data subject;</p> <ul style="list-style-type: none"> <li>- data regarding the racial or ethnical origin of the personal data subject;</li> <li>- genetic data, except if the data processing is no performed by experts for the needs of the preventive medicine, medical diagnosis or nurture and therapy of the personal data subject and</li> <li>- biometric data, necessary to confirm the identity of the personal data subject.</li> </ul> <p>The approval referred to in paragraph 1 of this Article shall be also necessary in the case when the personal data processing is performed in accordance with Article 8 paragraph 2 line 1 and Article 9 paragraph 1 line 1 of this Law.</p> <p>The approval referred to in paragraph 1 of this Article, shall not be necessary in case when the personal data processing is determined by law.</p> <p>The request for obtaining the approval referred to in paragraph 1 of this Article shall contain the data listed in Article 27 paragraph 2 of this Law.</p>	
DIRECTIVE 95/46/EC	MACEDONIAN LAW ON PERSONAL DATA PROTECTION	COMMENTS
<p><b>Article 21</b> <b>Publicizing of processing operations</b></p>		
<p>1. Member States shall take measures to ensure that processing operations are publicized.</p>	<p><b>Article 30</b> The Directorate shall keep electronic Central Register of personal data collections (hereinafter: Central Register).</p> <p>The Central Register shall contain data of the notifications received in accordance with Article 27 of this Law and the approvals issued pursuant to Article 29 of this Law.</p> <p>The Central Register shall be updated after the receiving of the notification by the controller or ex officio.</p> <p><u>The data of the Central Register shall be public, except for the data referred to in Article 27 paragraph 2 point 9 of this Law.</u></p>	<p><b>Acceptable</b></p>
<p>2. Member States shall provide that a register of processing operations notified in accordance with Article 18 shall be kept by the supervisory authority.</p> <p>The register shall contain at least the</p>	<p><b>Article 30</b> The Directorate shall keep electronic Central Register of personal data collections (hereinafter: Central Register).</p> <p>The Central Register shall contain data of the notifications received in accordance with Article 27 of this Law and the</p>	<p><b>Acceptable</b></p>

<p>information listed in Article 19 (1) (a) to (e).</p> <p>The register may be inspected by any person.</p>	<p>approvals issued pursuant to Article 29 of this Law.</p> <p>The Central Register shall be updated after the receiving of the notification by the controller or ex officio.</p> <p>The data of the Central Register shall be public, except for the data referred to in Article 27 paragraph 2 point 9 of this Law.</p>	
<p>3. Member States shall provide, in relation to processing operations not subject to notification, that controllers or another body appointed by the Member States make available at least the information referred to in Article 19 (1) (a) to (e) in an appropriate form to any person on request.</p> <p>Member States may provide that this provision does not apply to processing whose sole purpose is the keeping of a register which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can provide proof of a legitimate interest.</p>	<p>Article 28 paragraph 2</p> <p>The controller referred to in paragraph 1 of this Article shall be obliged to respond to the request of a natural person for submitting the data referred to in Article 27 paragraph 2 points 1, 2, 3, 4, 5, 6, 7 and 8 of this Law, within 15 days as of the day of receiving the request.</p>	<p><b>Acceptable</b></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Judicial Remedies, Liability and Sanctions</b> <b>Article 22</b> <b>Remedies</b></p>		
<p>Without prejudice to any administrative remedy for which provision may be made, inter alia before the supervisory authority referred to in Article 28, prior to referral to the judicial authority, Member States shall provide for the right of every person to a judicial remedy for any breach of the rights guaranteed him by the national law applicable to the processing in question.</p>	<p><b>Article 21 paragraph 2</b></p> <p>The subject of the personal data shall exercise the right to damage compensation caused by the processing of personal data or other activity carried out contrary to the provisions of this Law, <u>by submitting a claim for damage compensation to the competent court.</u></p>	<p><b>Acceptable</b></p>
<p><b>Article 23</b> <b>Liability</b></p>		
<p>1. Member States shall provide that</p>	<p><b>Article 21 paragraph 1</b></p>	<p><b>Acceptable</b></p>

<p>any person who has suffered damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to this Directive is entitled to receive compensation from the controller for the damage suffered.</p> <p>2. The controller may be exempted from this liability, in whole or in part, if he proves that he is not responsible for the event giving rise to the damage.</p>	<p>The controller shall be liable for any damage caused to the personal data subject by the personal data processing or by other activity, carried out contrary to the provisions of this Law, unless he/she proves that the damage did not arise due to his/her fault.</p>	
<p><b>Article 24</b></p> <p><b>Sanctions</b></p>		
<p>The Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular lay down the sanctions to be imposed in case of infringement of the provisions adopted pursuant to this Directive.</p>	<p><b>Article 49</b></p> <p>Fine in the amount of Euro 1.000 in Denar counter-value shall be imposed for misdemeanour on the legal entity-controller:</p> <ol style="list-style-type: none"> <li>1) acts in a manner contrary to the provisions referred to in Article 5 of this Law;</li> <li>2) acts in a manner contrary to the provisions referred to in Article 6 of this Law;</li> <li>3) acts in a manner contrary to the provisions referred to in Article 7-b of this Law</li> <li>4) acts in a manner contrary to the provisions referred to in Article 9 of this Law;</li> <li>5) acts in a manner contrary to the provisions referred to in Article 9-a paragraphs 2,3,5,and 5 of this Law;</li> <li>6) acts in a manner contrary to the provisions referred to in Article 9-b paragraphs 1,2,3 and 4 of this Law</li> <li>7) acts in a manner contrary to the provisions referred to in Article 9-c of this Law</li> <li>8) acts in a manner contrary to the provisions referred to in Article 10 paragraph 1 of this Law;</li> <li>9) acts in a manner contrary to the provisions referred to in Article 11 paragraph 1 of this Law;</li> <li>10) acts in a manner contrary to the provisions referred to in Article 12 paragraph 2 of this Law;</li> <li>11) acts in a manner contrary to the</li> </ol>	<p><b>Acceptable</b></p>

provisions referred to in Article 13 paragraph 2 of this Law;  
12) acts in a manner contrary to the provisions referred to in Article 13-a of this Law;  
13) acts in a manner contrary to the provisions referred to in Article 14 of this Law;  
14) acts in a manner contrary to the provisions referred to in Article 24 of this Law;  
15) acts in a manner contrary to the provisions referred to in Article 25 of this Law;  
16) acts in a manner contrary to the provisions referred to in Article 26 paragraphs 2 and 3 of this Law;  
17) acts in a manner contrary to the provisions referred to in Article 26-a of this Law;  
18) acts in a manner contrary to the provisions referred to in Article 27 paragraphs 1 and 4 of this Law;  
19) acts in a manner contrary to the provisions referred to in Article 28 paragraph 2 of this Law; 20) acts in a manner contrary to the provisions referred to in Article 29 paragraph 1 of this Law; 21) acts in a manner contrary to the provisions referred to in Article 34 paragraphs 1,2,4,5 and 6 of this Law;  
22) acts in a manner contrary to the provisions referred to in Article 35 of this Law;  
23) acts in a manner contrary to the provisions referred to in Article 44-c paragraph 1 of this Law, and  
24) acts in a manner contrary to the provisions referred to in Article 47-a paragraph 1 of this Law.

Fine in the amount of Euro 350 in Denar counter-value shall be imposed to the responsible person at the legal entity or official person in a state administration bodies for a committed misdemeanour, referred to in paragraph 1 of this Article.

Fine in the amount of Euro 250 in Denar counter-value shall be imposed to the natural person –controller entity for a committed misdemeanour, as referred to in paragraph 1 of this Article.

**Article 49-a**

	<p>Fine in the amount of Euro 2.000 in Denar counter-value shall be imposed for misdemeanour on the legal entity-controller:</p> <ol style="list-style-type: none"><li>1) acts in a manner contrary to the provisions referred to in Article 8 of this Law;</li><li>2) acts in a manner contrary to the provisions referred to in Article 23 paragraphs 1,2,3 and 4 of this Law;</li><li>3) acts in a manner contrary to the provisions referred to in Article 31 of this Law;</li><li>4) acts in a manner contrary to the provisions referred to in Article 32 of this Law, and</li><li>5) acts in a manner contrary to the provisions referred to in Article 33 of this Law;</li></ol> <p>Fine in the amount of Euro 600 in Denar counter-value shall be imposed to the responsible person at the legal entity or official person in a state administration bodies for a committed misdemeanour, referred to in paragraph 1 of this Article.</p> <p>Fine in the amount of Euro 450 in Denar counter-value shall be imposed to the natural person –controller entity for a committed misdemeanor, as referred to in paragraph 1 of this Article.</p> <p><b>Article 50</b></p> <p>Fine in the amount of Euro 1.250 in Denar counter-value shall be imposed for misdemeanor, to the natural person-processor of personal data collection, if:</p> <ol style="list-style-type: none"><li>1) acts in a manner contrary to the provisions referred to in Article 23 paragraphs 1,2,3 and 4 of this Law;</li><li>2) acts in a manner contrary to the provisions referred to in Article 24 of this Law;</li><li>3) acts in a manner contrary to the provisions referred to in Article 25 of this Law;</li><li>4) acts in a manner contrary to the provisions referred to in Article 26 paragraphs 2 and 3 of this Law;</li><li>5) acts in a manner contrary to the provisions referred to in Article 44-c of this Law, and</li><li>6) acts in a manner contrary to the provisions referred to in Article 47-a</li></ol>	
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	<p>paragraph 1 of this Law.</p> <p>Fine in the amount of Euro 350 in Denar counter-value shall be imposed to the responsible person at the legal entity or official person in a state administration body, for the misdemeanours referred to in paragraph 1 of this Article.</p> <p>Fine in the amount of Euro 300 in Denar counter-value shall be imposed to the natural person– processor of a personal data collection, for a committed misdemeanour referred to in paragraph 1 of this Article.</p>	
<b>DIRECTIVE 95/46/EC</b>	<b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b>	<b>COMMENTS</b>
<b>Transfer of Personal Data to Third Countries Article 25 Principles</b>		
<p>1. The Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures an adequate level of protection.</p>	<p><b>Article 31paragraph 1</b></p> <p>The personal data transfer to other countries may be carried out only if the other country provides adequate degree of personal data protection.</p> <p>The Directorate shall evaluate the level of protection provided by the other country, on the basis of:</p> <ul style="list-style-type: none"> <li>- the nature of the data;</li> <li>- the purpose and duration of the proposed operation or processing operations;</li> <li>- the country where the data shall be transferred;</li> <li>- governing of the law and</li> <li>- safety measures existing in the said country.</li> </ul> <p>The provisions referred to in paragraphs 1 and 2 of this Article shall not be applied to the countries members of the European Union and the countries members of the European Economic Space.</p>	<b>Acceptable</b>
<p>2. The adequacy of the level of protection afforded by a third</p>	<b>Article 31paragraph 2</b>	<b>Acceptable</b>

<p>country shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.</p>	<p>The Directorate shall evaluate the level of protection provided by the other country, on the basis of:</p> <ul style="list-style-type: none"> <li>- the nature of the data;</li> <li>- the purpose and duration of the proposed operation or processing operations;</li> <li>- the country where the data shall be transferred;</li> <li>- governing of the law and</li> <li>- safety measures existing in the said country.</li> </ul>	
<p>3. The Member States and the Commission shall inform each other of cases where they consider that a third country does not ensure an adequate level of protection within the meaning of paragraph 2.</p>	<p><b>Article 31 paragraph 5</b></p> <p>If the Directorate shall assess that the determined third country fails to provide proper level of protection regarding the personal data transfer, it shall immediately notify the European Commission and impose the controller to freeze the data transfer.</p>	<p><b>Acceptable</b></p>
<p>4. Where the Commission finds, under the procedure provided for in Article 31 (2), that a third country does not ensure an adequate level of protection within the meaning of paragraph 2 of this Article, Member States shall take the measures necessary to prevent any transfer of data of the same type to the third country in question.</p>	<p><b>Article 31 paragraph 7</b></p> <p>If the European Commission shall determine that the third country towards which the personal data transfer was aimed, pursuant to paragraph 5 of this Article, fails to provide proper level of protection, the Directorate shall issue a determination for the controller to prohibit the data transfer towards that country.</p>	<p><b>Acceptable</b></p>
<p>6. The Commission may find, in accordance with the procedure referred to in Article 31 (2), that a third country ensures an adequate level of protection within the meaning of paragraph 2 of this Article, by reason of its domestic law or of the international commitments it has entered into, particularly upon conclusion of the negotiations referred to in paragraph 5, for the protection of the private lives and basic freedoms and rights of individuals.</p> <p>Member States shall take the measures necessary to comply with the Commission's decision.</p>	<p><b>Article 31 paragraph 6</b></p> <p>If the European Commission shall determine that the third country towards which the personal data transfer was aimed pursuant to paragraph 5 of this Article, provides proper level of protection, the Directorate shall notify the controller for recalling the freezing of the transfer, implemented pursuant to paragraph 5 of this Article.</p>	<p><b>Acceptable</b></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 26 Derogations</b></p>		

<p>1. By way of derogation from Article 25 and save where otherwise provided by domestic law governing particular cases, Member States shall provide that a transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 25 (2) may take place on condition that:</p>	<p><b>Article 32</b></p> <p>If the state where the data are to be transmitted does not provide appropriate degree of personal data protection, the controller shall not transfer the personal data.</p> <p><b>Article 33</b></p> <p>As an exception to the Article 31 paragraphs 1 and 2 of this Law, the personal data transfer may be performed in the following cases:</p>	<p><b>Acceptable</b></p>
<p>(a) the data subject has given his consent unambiguously to the proposed transfer; or</p>	<p>- if the personal data subject had explicit written consent on the data transmission ; <i>(paragraph 1 line 1)</i></p>	<p><b>Acceptable</b></p>
<p>(b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of precontractual measures taken in response to the data subject's request; or</p>	<p>- when the transmission is necessary for implementing of the contract between the personal data subject and the controller or realization of the pre-agreed measures undertaken as a reply to the personal data subject's request <i>(paragraph 1 line 2)</i></p>	<p><b>Acceptable</b></p>
<p>(c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and a third party; or</p>	<p>- the transmission is necessary for signing or realization of the contract concluded in the interest of the personal data subject, the controller and a third party.<i>(paragraph 1 line 3)</i></p>	<p><b>Acceptable</b></p>
<p>(d) the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims; or</p>	<p>- the transfer is necessary for protection of the public interest or for the public safety;</p> <p>- the transfer is necessary for determining or meeting individual legal interests; <i>(paragraph 1 lines 4 and5)</i></p>	<p><b>Acceptable</b></p>
<p>(e) the transfer is necessary in order to protect the vital interests of the data subject; or</p>	<p>- the transfer is necessary for protection of the life or the vital interests of the personal data subject and subject.<i>(paragraph 1 line 6)</i></p>	<p><b>Acceptable</b></p>
<p>(f) the transfer is made from a register which according to laws or regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, to the extent that the conditions laid down in law for consultation are fulfilled in the particular case.</p>	<p>- the transfer is performed out of publicly available personal data collections or personal data collections available to a person who shall render his/her legal interest probable, in a scope determined by law. <i>(paragraph 1 line 7)</i></p>	<p><b>Acceptable</b></p>

<p>2. Without prejudice to paragraph 1, a Member State may authorize a transfer or a set of transfers of personal data to a third country which does not ensure an adequate level of protection within the meaning of Article 25 (2), where the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses.</p>	<p><b>Article 33 paragraph 2</b></p> <p>The personal data transfer in other countries, which fail to provide at least the same level of personal data protection as in the Republic of Macedonia, may be performed after prior approval from the Directorate, under the condition to have provided proper guarantees for protection of the personal data, rights and freedoms of the personal data subject.</p>	<p><b>Acceptable</b></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 27</b></p>		
<p>1. The Member States and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper implementation of the national provisions adopted by the Member States pursuant to this Directive, taking account of the specific features of the various sectors.</p> <p>2. Member States shall make provision for trade associations and other bodies representing other categories of controllers which have drawn up draft national codes or which have the intention of amending or extending existing national codes to be able to submit them to the opinion of the national authority.</p> <p>Member States shall make provision for this authority to ascertain, among other things, whether the drafts submitted to it are in accordance with the national provisions adopted pursuant to this Directive. If it sees fit, the authority shall seek the views of data subjects or their representatives.</p>	<p>Article 41 paragraph 1 line 10</p> <p>The Directorate shall have the following competencies:</p> <ul style="list-style-type: none"> <li>- give opinion on drafts codes of conduct referring to the personal data protection,</li> </ul>	<p><b>Acceptable</b></p>
<p><b>DIRECTIVE 95/46/EC</b></p>	<p><b>MACEDONIAN LAW ON PERSONAL DATA PROTECTION</b></p>	<p><b>COMMENTS</b></p>
<p><b>Article 28</b> <b>Supervisory authority</b></p>	<p><b>IX. ESTABLISHMENT AND COMPETENCIES OF THE DIRECTORATE FOR PERSONAL DATA PROTECTION</b></p>	

<p>1. Each Member State shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Directive.</p> <p>These authorities shall act with complete independence in exercising the functions entrusted to them.</p>	<p><b>Article 37</b></p> <p>For the purpose of supervising the lawfulness of the undertaken activities while processing and protecting personal data, a Directorate for personal data protection shall be established on the territory of the Republic of Macedonia as an individual and independent state body with the capacity of legal entity.</p> <p>The Directorate is managed by a Director, appointed and dismissed by the Assembly of the Republic of Macedonia upon the proposal of the Commission for Election and Appointment Matters of the Assembly of the Republic of Macedonia, through an open announcement.</p> <p>The director of the Directorate shall be appointed for a period of five years, with a right to be re-appointed, but no more than twice.</p> <p>The director of the Directorate has his/her deputy, appointed and dismissed by the Assembly of the Republic of Macedonia, upon the proposal of the Commission for Election and Appointment Matters of the Assembly of the Republic of Macedonia, through a open announcement, for a period of five years.</p> <p>The deputy director shall replace the director of the Directorate in cases of his/her absence or when due to illness or other reasons shall be prevented from executing his/her function, with all his/her management authorities and responsibilities.</p> <p>Both the director and the deputy-director of the Directorate shall be liable for their work and the work of the Directorate, at the Assembly of the Republic of Macedonia.</p> <p>The head office of the Directorate shall be in Skopje.</p>	<p><b>Acceptable</b></p>
<p>2. Each Member State shall provide that the supervisory authorities are consulted when drawing up administrative measures or regulations relating to the protection of individuals' rights and freedoms with regard to the processing of personal data.</p>	<p><b>Article 41 paragraph 1 line 9</b></p> <p>The Directorate shall have the following competencies:</p> <ul style="list-style-type: none"> <li>- give opinion on the draft regulations in the field of personal data protection,</li> </ul>	<p><b>Lack of transposition of this provision of the Directive</b></p> <p><i>Art. 41 MLPDP stipulates very broadly that the Directorate has the competencies to give opinion on draft regulation in the field of data protection. This provision is not a clear legal obligation that the opinion of the Directorate is mandatory. In order full</i></p>

		<i>transposition of the Directive demands to be achieved the re must be a clear obligation stipulated in the law to consult the Directorate before passing some regulation like laws, bylaws or other secondary legislation. Amendment is necessary.</i>
3. Each authority shall in particular be endowed with:		
- investigative powers, such as powers of access to data forming the subject-matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties,	<p><b>Article 44 – c</b></p> <p>The controller, that is the processor shall be obliged to enable the inspector while performing the inspection supervision the following:</p> <ul style="list-style-type: none"> <li>- enter any premises where personal data are being processed and conduct an inquiry in their processing;</li> <li>- request for written or oral explanation and call and interrogate persons regarding the personal data processing;</li> <li>- request for an inquiry in the documentations and any other data regarding the personal data processing;</li> <li>- examine the equipment for personal data processing and the equipment where the personal data are being preserved, with an authorized representative of the controller, i.e. processor;</li> <li>- use technical equipment intended for taking photographs;</li> <li>- request to prepare an expert analysis and opinion related to the conducted inspection supervision and</li> <li>- use the communication devices of the controller, i.e. processor due to meeting the goals of the same.</li> </ul> <p>As an exception to paragraph 1 of this Article, the inspector may enter the home of the natural person, controller, that is processor processing the personal data, according a procedure determined by law.</p>	<b>Acceptable</b>
- effective powers of intervention, such as, for example, that of delivering opinions before processing operations are carried out, in accordance with Article 20, and ensuring appropriate publication of such opinions, of ordering the blocking, erasure or destruction of data, of imposing a temporary or definitive ban on processing, of warning or	<p><b>Article 29</b></p> <p>Solely upon previously obtained approval from the Directorate the following personal data shall be processed:</p> <ul style="list-style-type: none"> <li>- personal identification number of the personal data subject;</li> <li>- data regarding the racial or ethnical origin of the personal data subject;</li> <li>- genetic data, except if the data</li> </ul>	<b>Acceptable</b>

<p>admonishing the controller, or that of referring the matter to national parliaments or other political institutions,</p>	<p>processing is no performed by experts for the needs of the preventive medicine, medical diagnosis or nurture and therapy of the personal data subject and</p> <ul style="list-style-type: none"> <li>- biometric data, necessary to confirm the identity of the personal data subject.</li> </ul> <p><b>Article 45</b></p> <p>For the conducted inspection supervision the inspector shall compose minutes containing findings regarding the situation. The minutes shall be delivered to the controller, that is processor within 30 days as of the day the inspection supervision has been conducted.</p> <p>The controller, that is the processor within three days as of the day of minutes acceptance can add notes.</p> <p>After the expiry of the time period referred to in paragraph 2 of this Article, the inspector shall adopt a decision for removal of the determined violations, thereby stipulating:</p> <ul style="list-style-type: none"> <li>- completion, update, correction, revealing or provision of personal data secrecy;</li> <li>- implementation of additional measures for personal data protection and organizational measures for securing secrecy and protection during the personal data processing;</li> <li>- prohibition for further personal data processing;</li> <li>- freezing of the personal data transfer in other countries;</li> <li>- provision of data and their transfer to other entities,</li> <li>- block, deletion or annihilation of the personal data,</li> <li>- disassembly, transfer or removal of equipment, devices, installations and systems used for data processing,</li> <li>- deadline for adoption of the regulations in accordance with the provisions of this Law, and</li> <li>- deadline for violation removal.</li> </ul> <p>Complaint for initiating an administrative dispute with the competitive court may be filed against the determination referred to in paragraph 3 of this Article, within 15 days as of receiving the determination.</p>	
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<p>- the power to engage in legal proceedings where the national provisions adopted pursuant to this Directive have been violated or to bring these violations to the attention of the judicial authorities.</p>	<p>Not transposed</p>	<p><b>Lack of transposition of this provision of the Directive</b>  <i>MLPDP has no provision which would give DPDP the power to engage in legal proceedings when data protection principles have been violated.</i></p>
<p>Decisions by the supervisory authority which give rise to complaints may be appealed against through the courts.</p>	<p><b>Article 29 – a paragraph 2</b>  Against the decision of the Directorate's director a file can for initiation of an administrative dispute before a competent court can be lodge within 15 days as of the day of decision acceptance.</p> <p><b>Article 33 – a paragraph 2</b>  Against the decision of the Directorate's director a file can for initiation of an administrative dispute before a competent court can be lodge within 15 days as of the day of decision acceptance</p> <p><b>Article 45 paragraph 4</b>  Complaint for initiating an administrative dispute with the competitive court may be filed against the determination referred to in paragraph 3 of this Article, within 15 days as of receiving the determination.</p> <p><b>Article 50 – a paragraph 7</b>  Complaint may be lodged against the decision of the Misdemeanour body which imposes misdemeanour sanction, for initiating administrative dispute with the competent court, within eight days after receiving the decision.</p>	<p><b>Acceptable</b></p>
<p>5. Each supervisory authority shall draw up a report on its activities at regular intervals. The report shall be made public.</p>	<p><b>Article 42</b>  The Director shall submit annual report on the work of the Directorate for the previous calendar year, to the Assembly of the Republic of Macedonia at latest until the end of May the current year.</p> <p>When necessary and upon the request of the Assembly of the Republic of Macedonia, the director shall submit additional reports.</p> <p>The Directorate shall publish the annual report referred to in paragraph 1 of this Article, on its website.</p>	<p><b>Acceptable</b></p>
<p>6. Each supervisory authority is competent, whatever the national law applicable to the processing in question, to exercise, on the territory of its own Member State,</p>	<p><b>Article 41 paragraph 1 lines 13 and 15</b>  The Directorate has the following competencies:</p>	<p><b>Acceptable</b></p>

<p>the powers conferred on it in accordance with paragraph 3. Each authority may be requested to exercise its powers by an authority of another Member State.</p> <p>The supervisory authorities shall cooperate with one another to the extent necessary for the performance of their duties, in particular by exchanging all useful information.</p>	<p>13)acting upon the requests from the foreign supervisory body of another state for exercising its competencies on the territory of the Republic of Macedonia;</p> <p>15) realizing international cooperation in the field of personal data protection and participating in the work of the international organizations and institutions dealing with personal data protection</p>	
<p>7. Member States shall provide that the members and staff of the supervisory authority, even after their employment has ended, are to be subject to a duty of professional secrecy with regard to confidential information to which they have access.</p>	<p><b>Article 43</b></p> <p>The director, deputy-director and the employees in the Directorate are obliged to keep as a secret the data which they have come across during their work, as well as during their mandate, i.e. their employment in the Directorate, and upon the termination of their mandate, and which are considered personal data or classified information in accordance with law.</p>	<p><b>Acceptable</b></p>
<p><b>Article 32</b></p>		
<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest at the end of a period of three years from the date of its adoption.</p> <p>When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.</p>	<p>No relevant to the country</p>	<p><b>Lack of transposition of this provision of the Directive</b></p> <p><i>In the MLPDP there is no reference to the Directive 95/46/EC</i></p>
<p>2. Member States shall ensure that processing already under way on the date the national provisions adopted pursuant to this Directive enter into force, is brought into conformity with these provisions within three years of this date.</p> <p>By way of derogation from the preceding subparagraph, Member States may provide that the processing of data already held in manual filing systems on the date of entry into force of the national</p>	<p><b>Article 16</b></p> <p>The controller shall not act in accordance with the request of the personal data subject as pursuant to Article 12 of this Law, when authorized as according to a law and if the personal data are processed exclusively for the scientific research purposes, or if they have been collected exclusively for defined statistical purposes and are kept for a period not exceeding the one necessary for the sole purpose of creating statistical data.</p>	<p><b>Acceptable</b></p>

provisions adopted in implementation of this Directive shall be brought into conformity with Articles 6, 7 and 8 of this Directive within 12 years of the date on which it is adopted. Member States shall, however, grant the data subject the right to obtain, at his request and in particular at the time of exercising his right of access, the rectification, erasure or blocking of data which are incomplete, inaccurate or stored in a way incompatible with the legitimate purposes pursued by the controller.

3. By way of derogation from paragraph 2, Member States may provide, subject to suitable safeguards that data kept for the sole purpose of historical research need not be brought into conformity with Articles 6, 7 and 8 of this Directive.

## **CONCLUSION**

As shown in the Comparative chart the Law on Personal Data Protection is harmonized with the Directive 95/46/EC.

Some small amendments of the Law are needed for its full harmonization. As shown some of the provisions of the Directive are not fully transposed in the national law for personal data protection so it is preferable for these few amendments to be implemented as soon as possible. Also it must be taken into account that In 2010 the European Commission issued key document “Communication - A comprehensive approach on personal data protection in the European Union (COM(2010) 609 final)”. The document addresses the reform process in European data protection rules to guarantee a high level of protection of personal data and provide legal certainty to individuals, public administrations and businesses in the internal market alike for several generations. The Commission's comprehensive approach will later be translated into concrete proposals and measures of both legislative and non-legislative nature.

Therefore when making the new amendments of the Law on Personal Data Protection the new measures have to be taken into account.