

Document 2.1.8-3

PROPOSAL of **THE DPDP's OPINION** **REGARDING DATA PROTECTION AND COPYING** **OF IDENTITY DOCUMENTS**

Component 2
Activity 2.1.8 - 3



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Introduction

An identification document or ID-card is a mandatory identity document of the Macedonian citizens and aliens staying/residing permanently in the RM. In addition to regular identification of a person, an ID-card can also be used for establishing one's person in electronic environment and for giving one's digital signature.

Macedonian identification and travel documents use biometrics according to EU standards. The use of biometrics in these documents has been promoted as a positive feature enabling the liberalisation of the visa regime. Beginning in December 2010 the holders of new Macedonian passports can travel in the Schengen area without applying for a visa, while holders of "old passports" must apply at the appropriate embassies.

D R A F T

The opinion of the Directorate for Protection of Personal Data

A Copying of Identity Documents

In exercising its supervisory powers under the Law on Personal Data Protection (Official Gazette, No. 7/05, as amended No.103/08, No. 124/10 and No.135/11), the Directorate for Personal Data Protection is often contacted by data controllers regarding the legal process of copying of citizens credentials for archiving purposes.

Although a copy in itself is obviously not of equal importance as the original document, the filing of a copy of an identity paper or of a public instrument shall qualified as a processing of personal data processing under the Law on Personal Data Protection of Macedonia. This means it should be carried out, like other types of processing, within the limits set by this Law and in accordance with special legal regulations.

Persons that file copies of identity documents or of public instruments for administrative purposes often argue they do this to be able to face the pressure of various controlling authorities. These authorities, when checking whether the alleged facts have been verified by inspecting a valid identity paper, no longer accept as evidence a "mere" entry of the data in the relevant records, but require at least a copy of the document. Also, it is often claimed this copying serves rather to protect the person whose identity documents have been copied and filed, since the responsible clerk can rely on the already existing copies and compare them with the actual (original) document every time these are submitted again; this may possibly help identify forged documents presented by other persons. However, taking into account, among others, the current technological possibilities of making perfect copies of personal documents and identity papers and the rising rate of crime committed with the aid of forged identity documents, there is a clear need for the adoption of rules whereby the chances of legitimate copying of personal documents and identity papers would be reduced.



The DPDP is informed that very often institutions are making copies of identity documents which are in possession of individuals, like is the Identification card or/and the Passport. Such activity shall be regarded as processing of personal which is not in compliance with the Law on Protection of Personal Data. Copying of identity documents is generally prohibited by any means unless the citizen (document's holder) to whom the document has been issued or a special law or an international convention binding on Macedonia stipulate otherwise.

In case any doubts arise concerning the term "citizen's consent", the prohibiting clauses refer to the relevant provision of Article 6 of the LPDP, which is based, together with the definition of the data subject's consent, on the principles of a free, deliberate and informed expression of a natural person's will.

The aforementioned legal framework also removes another, secondary problem which the Directorate for Personal Data Protection had to deal with in considering this issue. The question was whether, before the copying of an identity document with the consent of its holder, the person making the copy should also obtain the consent of third parties whose personal data are contained in the document. The data in question are the so-called "optional" data, i.e. the name, surname and personal identification number of the holder's spouse or children. To ensure compliance with the Law on Personal Data Protection, these data shall be (often) erased from the filed copies of identity papers.

There are two exceptions from the aforementioned rule:

- in cases where the citizen (holder of the identity document) will grant his/her **consent** to the copying, and
- in cases where copying is required by a **special legal regulation** or an international convention binding on Macedonia,
the making and filing of a copy of identity document is permitted.

Individual's consent

As regards the conditions under which the holder's consent is obtained, as has already been said above, the subject who wishes to make a copy of the submitted identity document must persuade the holder of his intentions especially that a filed copy is so much needed and cannot be done without that this kind of personal data processing does not negatively affect the existing level of protection of the data subject's (holder's) privacy or the privacy of other persons whose data are also processed in the aforementioned manner. In this respect it should be pointed out that the range of data obligatorily included in identity papers has already been extended by previous amendments to include also the holder's signature. The situation described above requires direct application of several provisions of the Law on Personal Data Protection. Above all, it is Article 2, paragraph 9) containing the definition of the "consent of the data subject". (*The Article 2 of the LPDP defines a consent of data subject as freely and explicitly given statement of the will of personal data subject whereby (s)he agrees to the processing of his/her personal data for previously determined purposes*). Such consent is to be "a free and informed manifestation (statement) of will of the data subject the content of which is his assent to personal data processing". Furthermore it shall also apply Article 9 of the LPDP stipulating that "Personal identification number of the citizen may only be processed upon prior explicit consent of the personal data subject". Also Article 10 of the LPDP stipulates the duty of data controller to inform data subject, prior to collection of personal data, about what



purpose of processing, what personal data, which controller and what period of time the consent is being given for. The controller must be able to prove the consent of data subject to personal data processing during the whole period of processing.” Although the setting of new conditions for copying identity documents is doubtless desirable, these conditions must be considered and interpreted with respect to the whole context of rights and duties of a controller under the Law on Personal Data Protection. Notwithstanding the granted consent, it must be ensured that the controllers also observe other data protection principles – legitimacy, proportionality and finality of personal data processing.

If the responsible subject (institution) chooses to file copies of identity documents, they automatically become controllers under the Law on Personal Data Protection and are obligated to fulfil all duties imposed by this legislation. The filing of the copies itself is only one of the operations performed by a controller in personal data processing. There are other elements of equal importance:

- fulfilment of the notification obligation of the controller towards the Directorate under Article 27 of the LPDP;
- the controller’s information duty aimed at the data subjects, whose framework is set by Article 10 of the LPDP and which is carried out prior to the data subject grants his or her consent;
- ability of the controller to prove that the consent of the data subject exists.

As for the second group of cases foreseen by the Act on Citizen Certificates and the Act on Travel Documents, i.e. cases in which the making of copies is authorized by a special legal regulation or by an international treaty binding on the Republic of Macedonia, even now an example can be found of a special law providing that the required documentation to be kept on file should also include copies of identity documents. It is, as example, the Law on Money Laundering Prevention and other Criminal Proceeds and Financial Terrorism (2008). This law sets special conditions for identification of natural persons (Article 10, Para. 1) and for compulsory keeping a copy of identity documents.

In this respect we must again refer to the relevant provisions of the Law on Personal Data Protection, in particular to Article 23 and the following, which set the duties of the controller in application proper technical and organisational measures for protection of collected and processed personal data. In addition to this duty there is a new obligation (paragraph 4) in Article 23, under which “the controller and/or the 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”.

Despite the existence of a general legal framework for copying identity documents, there are no indications that the legislators would also be willing to set conditions in a similar manner for copying other instruments or documents of a personal character, e.g. birth, marriage and death certificates etc., as it has been done in the case of personal identity cards and travel documents. So far there are only a few legal provisions, which authorize the copying of certificates. In other cases the copying of personal documents must be refused as illegal. Only if the controller proves to the data subject the legitimacy of the request, the copy may analogically be made and filed with the consent of the data subject.

