

DIRECTORATE FOR PERSONAL DATA PROTECTION

In accordance with article 44-b paragraph 5 of the Law on Personal Data Protection (“Official Gazette of Republic of Macedonia no. 7/05, 103/08 and 124/10), the director of the Directorate for Personal Data Protection enacted

RULEBOOK FOR THE MANNER OF PERFORMING INSPECTION SUPERVISION

I. GENERAL PROVISIONS

Article 1

This rulebook stipulates the manner of performing inspection supervision to controllers and processors, by the inspectors for personal data protection (hereinafter: inspectors).

Article 2

Inspection supervision is performed to controllers-physical and legal persons, state bodies and other bodies, which alone or jointly with others determine the purposes and means of processing of personal data, and to processors – physical and legal persons or authorized state bodies by law that which process personal data on behalf of the controller.

II. MOVEMENT OF CASES

Article 2 –a

After the receipt of the case, inspector records it in the Register for case movement. Register for case movement contains the following data:

- Ordinal number;
- Number and date of admission;
- Name and surname of the inspector in charge.

III. PLANNING OF THE INSPECTION SUPERVISION

Article 3

Inspection supervision is performed according to the Annual programme and operative monthly plans for performing inspection supervision, enacted by the director of the Directorate for Personal Data Protection (hereinafter: the director)

Article 3-a

For determination of the content of the Annual programme for performing inspection supervision, inspectors on 1 December of the current year submit check lists to the controllers.

Controllers must submit to the Directorate for Personal Data Protection completed check lists by 15 December of the current year.

The form of the check lists are contained within this Rulebook.

1. Annual programme for performing inspection supervision

Article 4

The Annual programme for performing inspection supervisions is prepared by sectors, based on the following criteria:

- number of data subjects whose personal data are processed by the controller, or the processor;
- based over the performed analysis of delivered check lists by the inspectors
- enlarged number of complaints for establishing violation of the right of personal data protection submitted by physical persons or associations of citizens;
- enlarged number of submitted initiatives, complaints and proposals for performing inspection supervision that refer to certain controllers or processors, submitted by physical or legal person;
- proportional representation of controllers or processors in the public and private sector and
- proportional representation of controllers, or processors in municipalities.

Article 5

(1) The Head of the Department for performing inspections (hereinafter: the Head of the Department) together with the inspectors prepare a Draft Annual Programme for performing inspection supervisions for the actual year, after previous analyses of the performed inspections from the previous year.

(2) The Head of Department submits the Draft Annual Programme for performing inspection supervision to the director, on the 15th of January latest of the actual year.

(3) The Annual Programme for performing inspection supervision would be published on the web page of the Directorate for Personal Data Protection after its enactment.

2. Operative monthly plans for performing inspection supervision

Article 6

Operative monthly plans for performing inspection supervision contain the following: number of inspection supervisions by controllers or processors, the type of inspections supervision, the scope of performed inspections, number of planned inspections to be performed by each inspector, the date of initiation and completing the inspection supervision.

Article 7

(1) The election of controllers or processors that will be included in the operative monthly plans should be made by an accidental choice of the Commission established by the director, composed by a president and two members from the Department for performing inspections.

(2) The Commission should make the accidental choice of controllers or processors by using

publicly available registries, electing a certain number of controllers or processors where inspections will be performed.

(3) The Commission should compose a report for the made election of controllers or processors and submit it to the Head of the Department and the director.

Article 8

Amendments of the operative monthly plans would be possible by request of:

- the controller or the processor where the inspections should be performed;
- the inspector who performs the inspection
- the Head of the Department or
- the director

IV. Preparation of supervision

Article 8-a

In purpose of professional and rational conducting of the inspection supervision over controllers and processors, inspector before In order of professional and rational execution of inspection supervision of controllers and processors, inspector before starting the inspection will take preparatory actions depending the case or the controller or processor, including:

- 1) Completing of controllers data, or processors, his full name and address, organizational setup of the subject, tax number or registration number, legal representative – director and data protection officer,
- 2) Review of the information from the Central registry for personal data collections; consideration of cases which are kept by the Directorate which includes the controller or processor with or without his knowledge; correspondence with the Directorate;
- 3) Reviewing the Minutes from the last performed supervision by the Directorate and determent irregularities;
- 4) Determination of period of performing supervision
- 5) Determination of type of supervision
- 6) Determination of the subject of supervision
- 7) Explanation for the chosen subject of supervision where a short description of the reasons for the specific subject is given and the reasons for performing supervision
- 8) Analyzing of the laws and bylaws related with the specific supervision and
- 9) Usage and analyzing of additional literature for the controllers or processors activity, which is the subject of inspection.

Article 8-b

Preparatory work includes determination of the subject of inspection, application of the measures and actions for protection of personal data, which the controller or processor is legally obliged to apply.

Approving of the inspections subject is performed by the head of the unit for inspection supervision, except in cases of urgent, periodic supervision.

All the preparatory activities are registered by the inspector in a form for supervision preparation.

III. MANNER OF PERFORMANCE OF THE INSPECTION SUPERVISION

Article 9

- (1) The content, the type and duration of the inspection supervision is proposed by the Head of the Department according to the operative monthly plan for performance of inspection supervision, and it should be approved by the director.
- (2) By exclusion of paragraph 1 of this article, the Head of the Department or the

inspector, with previous consent of the director could reduce or prolong the duration of the inspection supervision.

- (3) Inspector on monthly basis may perform at least three regular supervisions and at least two irregular supervisions, according to the monthly operation plan for conducting of inspection supervision.

Article 10

(1) The inspection supervision may be notified of not, and by its scope it could be comprehensive or partial.

(2) The inspection supervision would be performed in the premises of the controller or the processor where personal data are processed.

(3) The director notifies in written the controller or the processor about the date, the type and the scope of the inspection supervision where the inspection would be performed.

Article 10-a

1. Based on the written request for delaying of supervision and if the same is received before the beginning of supervision, inspector in written will notify the controller or processor for accepting the request.
2. In case when delay is required and such request is not received before the beginning of supervision, but inspector is communicated on the spot of supervision, the executor of supervision will bring a decision on the spot of supervision and draws up a written note.

Article 11

(1) The inspector performs the inspection supervision alone and independently decides about the activities and measures that should be taken during the inspection supervision, stipulated by law.

(2) The inspector performs its duties according to the Annual programme and the operative monthly plans for performing inspection supervisions.

Article 12

(1) In general cases, each inspector performs alone the inspection supervision, and by exemption the inspection could be performed by more inspectors, when that is provided in the operative monthly plans for performance of inspection supervision or by an order of the director, considering the complexity and the scope of the inspection supervision.

(2) When the inspection supervision is performed by more inspectors, only one record would be composed and one decision would be issued and signed by all inspectors that participated in the supervision.

Article 13

For the performance of the inspection supervision to the controller or the processor, each inspector uses a check list.

Article 14

The inspector may perform inspection supervision to controllers or processors in the public or in the private sector.

Article 15

The inspector informs the responsible person or the official person of the controller or the processor where inspection is performed about the purpose, the plan and the method of the inspection.

Article 16

1. After the inspection supervision has been completed, the inspector composes a report which especially contains: the name and seat of the controller or processor where inspection has been performed, date and place of performance of the inspection, name and surname of inspectors, name and surname of the representatives of the controller or the processor who participated in the inspection, summary of the established conditions and violations.
2. The form of report from paragraph 1 of this article is contained within this Rulebook.

Article 17

The inspector obligatorily delivers to the Head of the Department and the director one sample of the record and the decision for each inspection performed.

IV. INSPECTION EVIDENCE AND STATISTICS

Article 18

For initiatives, complaints and proposals for performing inspection supervision, the inspector keeps a registry that especially contains: name and surname or name and seat of the complainant, name and surname of the physical person or name of the legal entity (controller or processor), the address or seat of the legal entity, telephone number, email, short summary of the initiative, complaint or proposal, delivered evidences and statements.

In case of initiation of administrative proceeding, the inspector who performed the supervision must review the complaint in accordance to the Law on Administrative Disputes.

III – a. INSPECTION DOCUMENTATION

Article 18 –a

- (1). The acting inspectors for performed supervision draw up and keep inspection documentation.
- (2). Inspection document provides:
 1. Monitoring of the controller or processor in terms of adherence to the law;
 2. Certain facts related to the work of the inspector;
 3. Data which may be used for following inspection supervision at the same controller or processor;
 4. Evidence while conducting misdemeanour proceeding in front of Misdemeanour Commission of Directorate for Personal Data Protection.

(3). Inspector's documentation will be drawn up only for one inspection supervision and for one controller or processor and contains all of the evidences (in hand written form, photocopies or printed versions of electronic files) and undertaken activities during preparation and realization of the inspection supervision. Inspector's documentation contains every document prepared by him during conduction of the supervision, as well as the evidences that inspector came up to while performing the inspection (copies from: bills, cards, contracts and every other relevant document for inspection supervision).

(4). Inspector's documentation is sort starting from the initiative for inspection supervision up to the last adopted act in the inspection proceeding. The scope and the content of the documentation depend of the type of the supervision as from the concrete case which is a subject of the inspection supervision.

(5). Each inspector's documentation is numerated by the number or initiative for performing supervision and the date when the initiative is issued and contains full name, address and basic activity and subject of the inspection supervision. At the beginning of the documentation a content that need to be filled by the inspector who prepares the file, is placed in order listed below:

1. Name of the controller or processor where the inspection supervision was carried;
2. When the inspection started (hour, day, month and year);
3. Inspector's signature who ended the inspection supervision and prepared the file;
4. Description of the content of the documentation (that contains: name of the folder, name of the document and number of pages of the document).

Article 18-b

Inspection documentation aligns the following order and includes:

1. Request for delay of the inspection supervision – if there is any;
2. Answer to the request for delay of inspection supervision (written notification);
3. Request for expanding the inspection supervision;
4. Brief note regarding activities undertaken by the inspector while preparing the inspection supervision;
5. Annexes from the documents collected in preparation of the inspection supervision;
6. Request from the units within the Directorate for Personal Data Protection, other authority or institution if inspection supervision is performed on their request;
7. Report for inspection supervision or notification that there is no deterrent deviations regarding the Law;
8. Written notes from the controller or processor based on the report (if any);
9. Notification to the controller or processor regarding the notes;
10. Additional report (if any);
11. Report from executed alignment;
12. Warrant for payment and other documents;
13. Request for misdemeanour proceeding;
14. Effective and executive decisions of the Misdemeanour Commission or court proceeding.

(1) Inspection documentation shall be consistent in a simple and understandable manner in direction of providing:

1. Order;
2. Visibility and clarity in the classification of data and
3. Orderliness and expertise

(2). Keeping of inspection documentation is performed by case number for supervision and date of supervision. Amending the inspector's documentation is performed by inspector himself and person in charge for the archive.

Article 19

The inspector keeps a registry of performed inspections that especially contains: ordinal number, name and surname or name of the legal person (controller or processor), address or seat of the legal person (controller or processor), number and date of the decision for authorisation for performing inspection supervision, number and date of the notification, date of initiating and completing the inspection, date until the record should be prepared, number and date of the record, number and date when the record is sent to the controller, date until the recommendations of the record should be given, the date until the decision should be prepared, number and date of the decision, number and date when the decision has been sent, number and date of the record for compensation, number and date when the official warrant has been issued, number and date of the request for initiating a misdemeanour procedure, the date until a legal claim may be submitted to the Administrative court of Republic of Macedonia, number and date of the reply to the legal claim to the Administrative court of Republic of Macedonia and comments.

Article 19-a

Inspector keeps subsidiary records for payments orders, which particularly contains: (da se utvrdi soдрzinata na pomosnata evidencija).

Article 19-b

Inspector keeps inspection statistics for analytical approach towards performing the inspection supervision and systemizing the areas where supervision inspection shall be performed.

V. TRANSITIONAL AND FINAL PROVISIONS

Article 20

By entering into force of this Rulebook, the Regulation for the manner of performance of the control no.01-586/1 from June, the 2nd 2008 and nu.01-586/2 from October 22nd, 2008 shall no longer apply.

Article 21

This Rulebook shall enter into force the next day after the day when it has been published in the “Official Gazette of Republic of Macedonia” and it would be applicable from February 28th 2009.