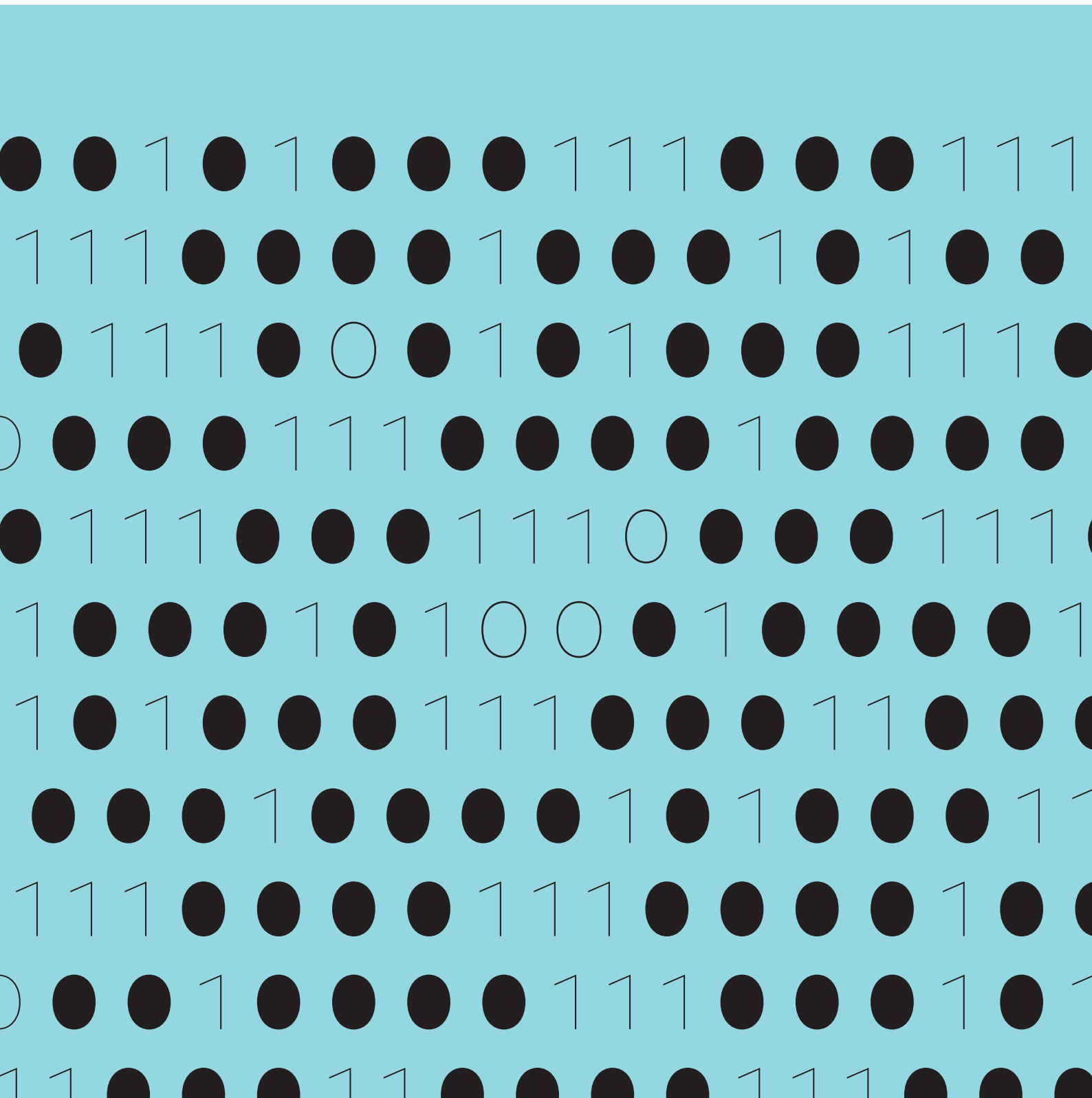
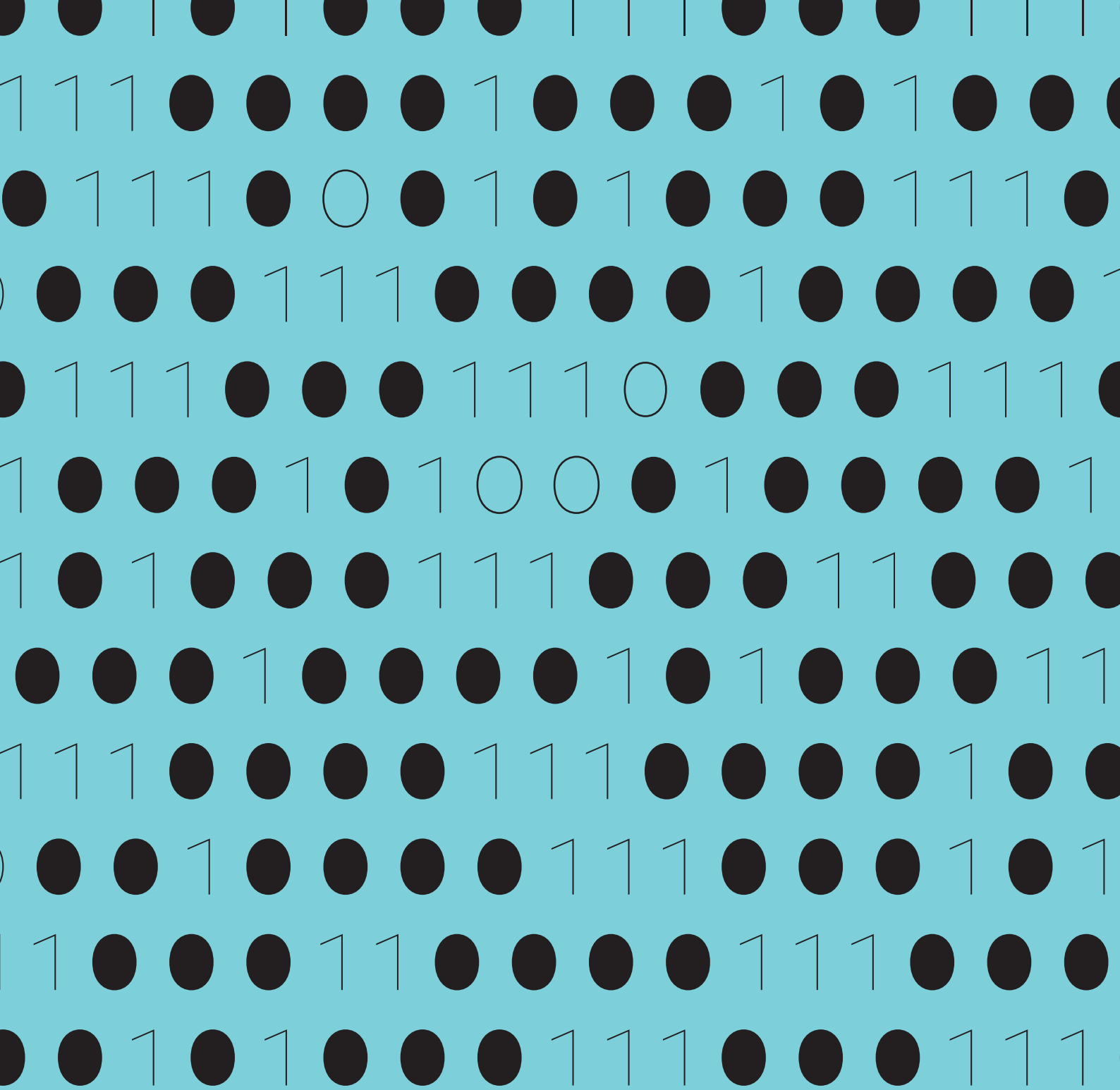




sela
south east legal alliance

Data Protection & Privacy





What we do

Data Protection & Privacy

SELA - South East Legal Alliance
June 2018



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Big Data - Big Challenge

In today's digitalized world, information is at the very core of our modern-day lives. Not a single day goes by without the use of different mobile apps, social media networks, online banking or other web-based services. Consequently, large amounts of information are available. The clever and strategic usage of this data can empower smart data controllers and data processors to gain significant competitive advantages over their competitors.

As lucrative as this may seem, there are particular regulations and directives to ensure consumers' rights and privacy, which, in case of misconduct, can lead to sensitive fines and legal claims. The different regulatory bodies impose stricter regulations on a regular basis. The most prominent example at the moment are the European Union's General Data Protection Regulation (GDPR)¹ and Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016². This

demonstrates that times are changing and legislators are having a close eye on big data and how companies are handling it. Therefore, good and ethical data management should no longer be neglected and safeguarding (personal) information, prevention of misconduct and corruption need to be on every companies' agenda.

SELA experts understand how costly and damaging a data breach and consecutive legal action can be, which is why we take a preventive approach to advisory on all data protection and privacy compliance matters. We are there to help our clients mitigate potential risk and gain the advantage over their competition. SELA's legal experts closely monitor all of the latest regulations that are being put in place to keep people's private information safe and are fully aware of the implications of data protection regulations on our clients' business.

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

² Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

Services and Expertise

In this highly sensitive field of data protection law it is of utmost importance to be aware of the current legislation and trends to comply with governing laws and to gain rightful competitive advantages over your competitors.

Members of SELA advise their clients on all aspects of data protection and privacy law, with a particular focus on data collection, processing and transfer, privacy and data security, audits, compliance advice, representations in disputes arising from data protection related matters, marketing and cybersecurity. Leading market players from the technology, media & telecommunications, retail & consumer goods, pharmaceutical and healthcare, financial services, energy, automotive and manufacturing sector, trust the profound and seamless advice of SELA.

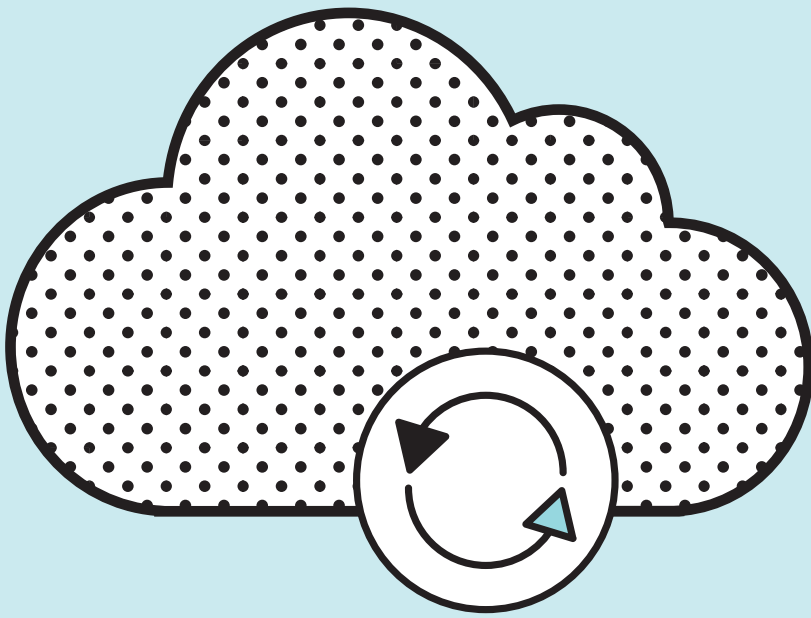
As data protection and privacy matters are often closely intertwined with other fields of law, it is key to have industry specific know-how aboard while accessing a potential data breach, security issues, compliance matters, disputes or marketing related topics, to name a few. SELA pursues a multi-disciplinary approach to data protection and privacy matters, providing clients with a legal team consisting of leading individuals in their fields of law to guarantee the best legal service for their particular situation.

Compliance

Every business is obliged to handle all personal (sensitive) data lawfully and with the required respect for privacy. With the new European GDPR, the framework for data management has become more detailed and more sophisticated challenging organizations' data compliance. This law is not only influencing companies within EU member states, but also enterprises in countries in the EU Accession process or other extraterritorial companies. Non-compliance with data protection regulations can result in fines up to EUR 20 million or 4% of the annual turnover. Members of the SELA network help clients avoid penalties in this regard and advise in all data protection compliance related issues.

Our Services

- Due diligence of current data protection mechanisms
- Identification of potential threats and outline of company specific remedies
- Tailored data protection and privacy compliance trainings and audits
- Drafting and review of compliance programs and policies
- Advising on staff data on a multi-jurisdictional basis, including new data policies, contracts and procedures



Data collection, processing and transfer

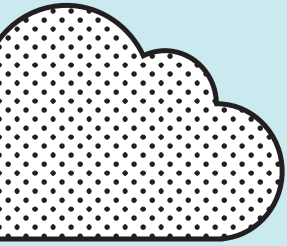
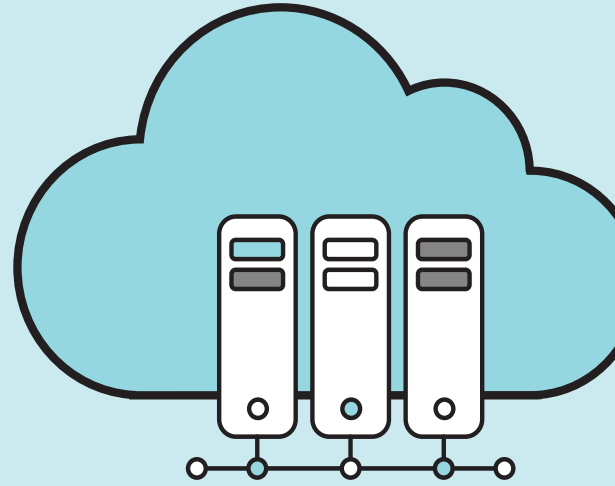
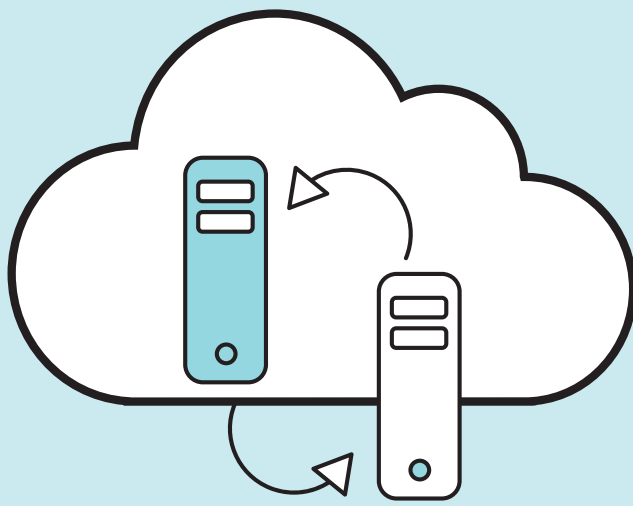
Through continuous misconduct and data leaks in various areas, data protection has become a hot topic for legislators around the world. Several preventive measures have been taken and put into action on local, national and international level. The best example of the growing awareness of the necessity to safeguard personal (sensitive) data is the implementation of the GDPR in the European Union. However, stricter laws on data protection and privacy is not limited to EU grounds, but also largely affects EU Accession countries and companies located in other countries. Data protection lawyers from SELA member firms are signposts in helping clients navigate successfully through the jungle of data management related directives and regulations.

- Legal first aid in case of data breaches (e.g. coordination of investigations, response support and remedies)
- Data transfer approval procedures
- Tailored data protection training sessions incl. checklists and guidelines
- Data protection aspects of acquisitions, joint ventures and other transactions, etc.

Our Services

- Audit of current data collection, processing, transfer, as well as privacy and security of information
- Database registrations (if applicable)
- Government and industry-standard compliance advice
- Advice on suitable technology equipment fulfilling data protection requirements
- Consultancy on liabilities (e.g. for misconduct, data breaches etc.)





Audit

In order to know if a company meets the complex and increasing requirements of data protection, a diligent audit is inevitable. An audit sheds light on current customs in terms of protection of personal information and privacy rights of individuals and shows the level of compliance with the governing laws. We offer regular audits, because every business should take the time to go through its practices in order to avoid unnecessary claims and legal actions. SELA's data protection specialists assist clients with their risk assessments through legal data protection audits helping them to eliminate the risk of misconduct, data breaches or cyberattacks usher good conduct in relation to data protection on all levels of an enterprise.

Our Services

- Data protection and privacy audits
- Assurance of data protection policies
- Testing of effective control mechanisms
- Recommendation of necessary adjustments



Disputes

Gaining strategic advantages over competitors by using (sensitive) data is a central goal of data controllers. But with increased competition, the marketplace becomes fiercer and consequently prone to disputes. Business internal misconduct resulting in, for example, deliberate data breaches or dissemination through insiders, as well as information leaks through external forces or cyberattacks most certainly lead to legal actions to hold the perpetrator/s accountable. Experts predict a surge in disputes caused by the stricter data protection regulations, which might also lead to an increased demand of skilled litigators with particular expertise. SELA lawyers are known for their specialist, preventative approach and their outstanding knowledge of contentious regulatory practices. Our experts work side by side with our other relevant practice groups to identify potential risks and to mitigate them from the start.

Our Services

- Representation in corporate and commercial disputes before the relevant Courts
- Assistance in cross-border investigations
- Data transferring and security related disputes
- Internal investigations for allegations of data protection breaches
- Drafting privacy notices and responses to contentious issues / requests

(Direct) marketing

Direct marketing, may it be online, via phone or mail, heavily relies on personal data about consumers and their habits. In order to provide (potential) clients with targeted products and services, businesses use relevant personal information to target their audience. However, with the growing importance of data protection, namely the new EU regulation GDPR that came into force in May 2018, and increasingly vigilant customers, data controllers need to audit and for the greater part significantly update the way they handle, store, process and transfer data. The lawyers in each of the member firms are perfectly aware of these dynamically changing regulations and their implications on the field of marketing.

Our Services

- Data audits and compliance with domestic legislation
- Marketing consents
- Cross-border transfers and strategic assessments
- Formulation of valid opt-in and opt-out clauses
- Suitable and compliant CRM storage mechanisms for consumer data
- Development of legally valid consumer data collection and data update strategies
- Specific (direct) marketing trainings relating to the legal framework
- Advising on data protection matters related to the collection and use of personal information in marketing and promotional campaigns

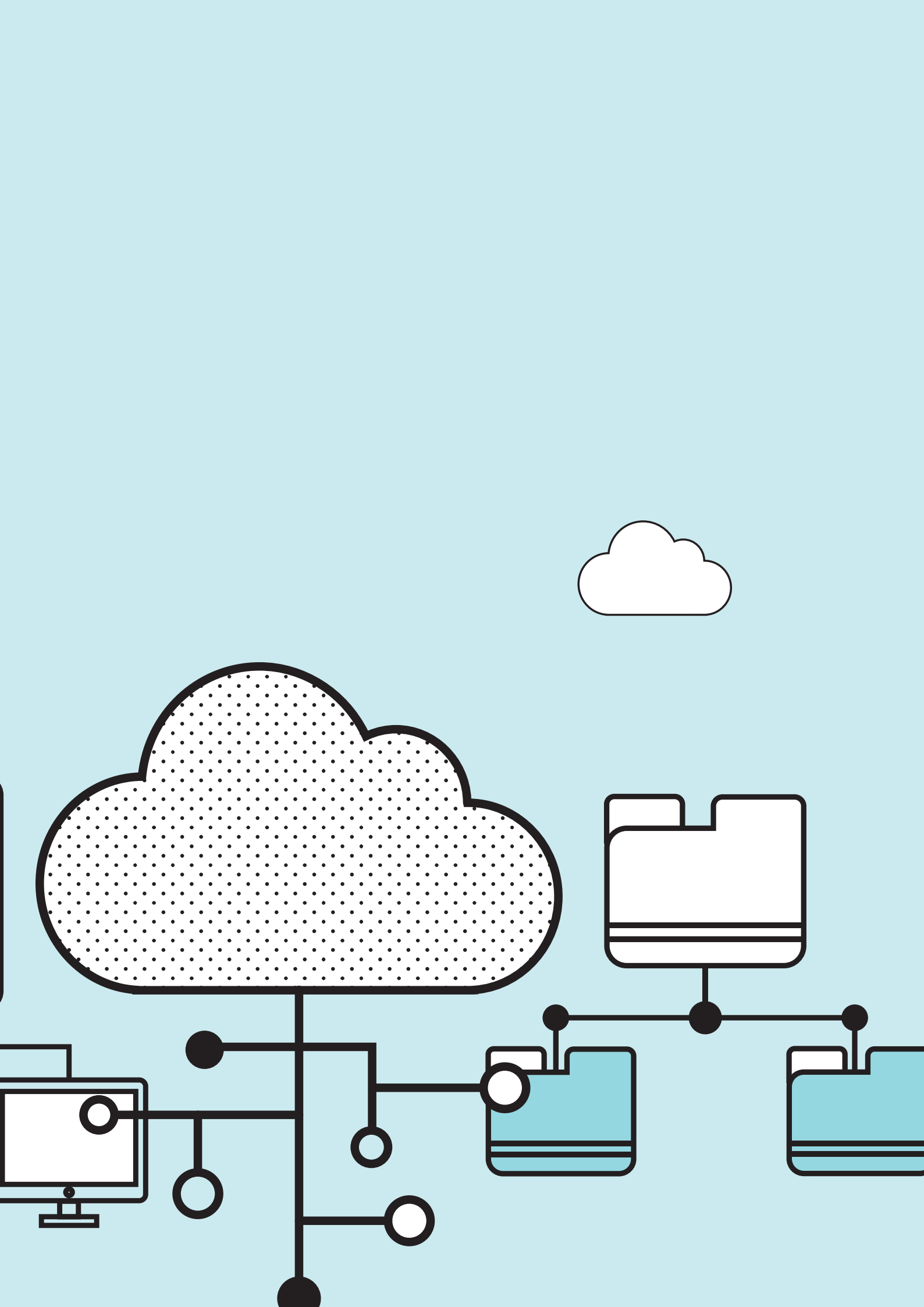
Cybersecurity

Cyberattacks towards governments, organization and enterprises are on the rise. These virtual attacks on networks and its enclosed data has become a real threat, especially for the data controller and processor in terms of data protection and security of these valuable information. With the growing awareness of this issue, the legislators everywhere geared up to tackle any kind of cyberattack. SELA lawyers are well-versed in the matter of cybersecurity and help clients to be wary and careful data controller and processors.

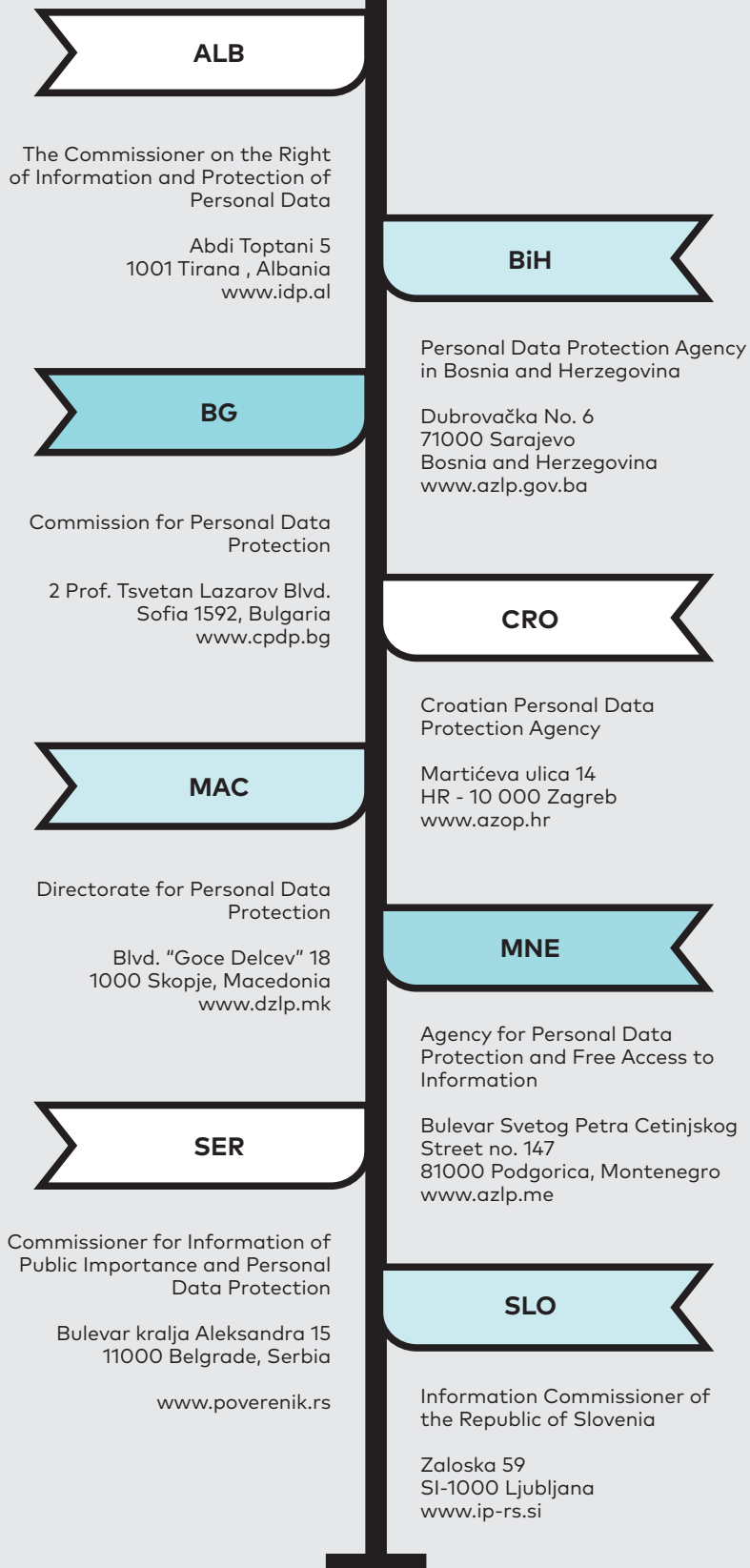
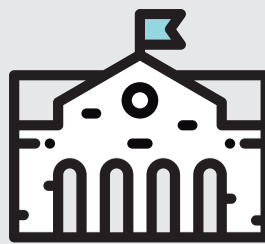
Our Services

- Actions a victim can take in case of a potential / actual intrusions
- Liability issues for the delinquent and/or the victim in case of a cyberattack
- Regulatory law for cybersecurity





Competent Authority



Data Protection Law

ALB

Law no. 9887, dated 10.03.2008 "On the protection of personal data", amended by law no. 48/2012, dated 26.04.2012 published in the Official Gazette no. 53/2012, and by law no. 120/2014, dated 18.09.2014, published in the Official Gazette no. 160/2014.

BiH

Law on Protection of Personal Data ("Official Gazette of Republic of Srpska" nos. 49/06, 76/11 and 89/11, the "Law")

BG

Personal Data Protection Act (State Gazette of the Republic of Bulgaria no. 1/2002, last update no. 7/2018)³

CRO

Act on Implementation of the GDPR (Official Gazette No. 42/18)⁴

MAC

Law on personal data protection (Official Gazette No.7/05; 103/08;124/10; 135/11; 43/14; 153/15; 99/16)

MNE

Personal Data Protection Law (Official Gazette of Montenegro no. 79/2008, 70/2009 and 44/2012) ("the PDPL").

SER

Personal Data Protection Law (Official Gazette of the Republic of Serbia no. 97/2008, 104/2009, 68/2012 and 107/2012)

SLO

Personal Data Protection Act (Official Gazette of the Republic of Slovenia no. 94/07 - official consolidated version) A new personal data protection act proposal is in the legislative procedure, but not yet adopted

Registration of Data Controller

ALB	<p>Mandatory As a general rule, Data Controllers are required to notify the Commissioner before processing the personal data. In certain cases, based on the secondary legislation, Data Controllers might be exempted from the obligation to notify the Commissioner or should obtain authorization from the Commissioner before processing the personal data (when applicable).</p>
BiH	<p>Mandatory Data Controllers are obliged to register all personal data collections with the Personal Data Protection Agency.</p>
BG	<p>N/A Although the legal provisions in the current Personal Data Protection Act which impose a registration obligation are not yet explicitly abolished, after 25th it is not possible to submit registration application via the online system of the Commission).</p>
CRO	<p>Not mandatory</p>
MAC	<p>Mandatory Prior to initiating the personal data processing, the controller is obliged to notify the Directorate with registration as such in the Central Register maintained by the Directorate. The registration of controller is not required as mandatory, in cases when:</p> <ul style="list-style-type: none"> the personal data are part of the publicly available collections based on law; the personal data collection refers to maximum ten employees; or the processing refers to personal data of member of associations founded for political, philosophical, religious or trade-union purposes.
MNE	<p>Mandatory A notification has to be filed to the Agency for Personal Data Protection before the start of data processing.</p>
SER	<p>Mandatory A notification has to be filed to the Commissioner no later than 15 days before the initiation of data processing.</p>
SLO	<p>Mandatory. A notification has to be filed to the Commissioner. This statement has to be submitted to the competent authority no later than 15 days before starting to handle data.</p>

³ The PDPA is expected to be updated in accordance with GDPR.

⁴ By coming into force of this Act the previous Data Protection Act (Official Gazette No. 103/03, 118/06, 41/08, 130/11, 106/12) has ceased and is expected that a new Data Protection Act should be passed, with the content in accordance with GDPR and specifying its provisions in the form of a separate piece of legislation.



Data Officer

ALB

Mandatory

Data Controllers are required to appoint, through internal acts, a contact person in charge of supervising and compliance of the controller with the legal requirements on processing and protection of personal data.

BiH

Not Mandatory

BG

Mandatory

Under Art. 37 GDPR, if one of the criteria in Art. 37, Para 1 is in place

CRO

Mandatory

In cases provided under the Chapter IV, Section 3 of the GDPR, specifically Article 37 and with rights and obligations as provided under the Articles 38 and 39 of the GDPR.

MAC

Mandatory

Except in cases when Controller has no obligation to be registered as a Data Controller.

MNE

Mandatory

If the data controller has more than 10 persons authorized to process personal data.

SER

Not Mandatory

SLO

Not Mandatory

Unless when provided for according to the GDPR.

However, companies internally assign through their internal acts, who will handle and process data, even when Data Protection Officer is not mandatory.

Data Collection & Processing



Data controllers must obtain the data subject's consent before processing personal data unless the Albanian Data Protection Law specifically authorizes the processing or an exception applies.

Processing of sensitive data is subject to specific rules provided by law, aiming to protect the subject data.



At least one of the legal bases under Art. 6 GDPR should be in place.

For 'special categories of personal data' the special legal bases under Art. 9 GDPR applies.



Data collection & processing of Personal data may be performed:

- upon previously obtained consent of the personal data subject;
- 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;
- for fulfilling the legal obligation of the controller;
- for protection of the life or the essential interests of the personal data subject;
- for exercising activities of public interest or an official authorization of the controller or data being revealed to a third party; or
- fulfillment 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.

In cases, where processing is based on the personal data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation.

Collecting and processing of sensitive data is prohibited. The processing may be permitted only in specific cases, with the consent of the data subject or/and prior approval from the Directorate.



Only in accordance with statutes.

Special protection of sensitive personal data required.



As provided under the GDPR and the legal grounds and principles for data collection and processing contained therein.



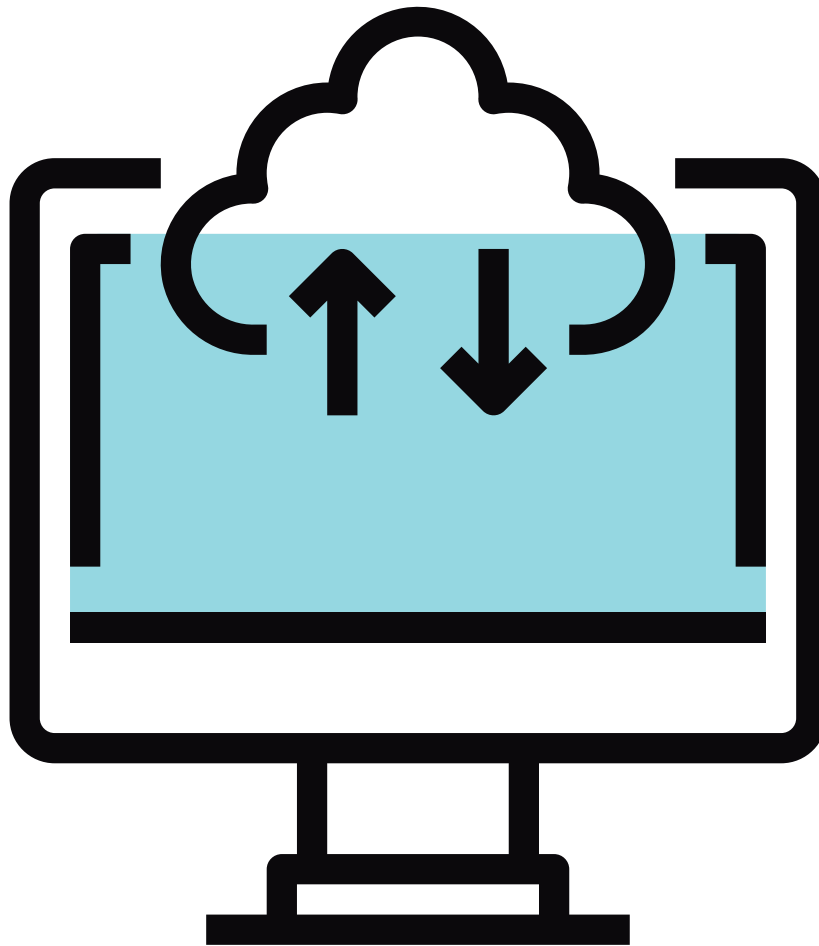
Only in accordance with the PDPL which prescribes legal grounds for data collection and processing. Obligation to notify the data subject on personal data processing is mandatory. Special protection of sensitive personal data is required.



Only in accordance with the PDPL which prescribes legal grounds for data collection and processing. Obligation to notify the data subject on personal data processing is mandatory. Special protection of sensitive personal data is required.



Only in accordance with statutes and the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation). Special protection of sensitive personal data (so-called "special categories of personal data") required.



Data Transfer

ALB

Cross-border transfer of personal data is permitted, in accordance with the rules provided by the law and other applicable secondary legislation. Countries to which personal data is transferred are categorized as offering or not offering an adequate level of protection of personal data. Secondary legislation determines the countries offering an adequate level of protection of personal data.

Transfer of personal data to countries that do not offer an adequate level of protection may be subject to authorization from the Commissioner on the Right of Information and Protection of Personal Data.

BiH

Data Transfer abroad is allowed if adequate personal data protection measures, prescribed by the Law, are met.

Exceptionally, data can be transferred abroad without adequate measures, in certain cases explicitly described by the Law.

BG

Data transfers outside EU/EEA are admissible only in accordance with CHAPTER V 'Transfers of personal data to third countries or international organizations' of GDPR.

CRO

As provided under the GDPR and the rules sent therein, namely in the Chapter V ("Transfers of personal data to third countries or international organizations").

MAC

The personal data transfer to other countries is permitted only if the other country provides adequate degree of personal data protection. Before the transfer is initiated, the Controller has to file a written request and to provide an approval from the Directorate.

The Directorate shall evaluate the level of protection provided by the other country, on the basis of:

- the nature of the data;
- the purpose and duration of the proposed operation or processing operations;
- the country where the data shall be transferred;
- governing of the law and
- safety measures existing in the said country.

The evaluation principle does not apply when the transfer of data is in one of the countries members of the European Union and the countries members of the European Economic Area. In this case the controller is obliged only to notify the Directorate for the transfer.

The evaluation is usually very specific and thorough when is requested transfer of personal data in third countries.

Based on the results of the evaluation process, the Directorate issues written approval or prohibition for the data transfer towards the country where the transfer was requested.

MNE

Possible, when in accordance with the PDPL and when certain levels of data security are met. The competent authority needs to approve data transfer to a third country ensuring a sufficient level of data protection, except when data transfer is done to EU countries, the European Economic Area or the countries that are on the EU's list of countries that have an adequate level of personal data protection. Other exception is when explicit consent is given by the data subject.

SER

Possible, when in accordance with the PDPL, i.e. when certain levels of data security are met. The country recipient of personal data should be a party of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the European Council or should guarantee at least the same level of protection of rights as prescribed by the respective convention. In other cases, the competent authority needs to approve the data transfer to a third country ensuring a sufficient level of data protection.

SLO

Possible, when in accordance with statutes and certain levels of data security are met. The competent authority needs to approve data transfer to a third country ensuring a sufficient level data protection. In certain cases, provided for expressly in the Data Protection Act, the transfer to third countries is lawful with no previously issued approval of the competent authority.



Fine for Non-Compliance with Statutes

ALB

EUR 80 - 16,000⁵

In case of criminal illegal interventions in private life, potential sanctions include fines and imprisonment up to two years.

BiH

EUR 250 - 50,000

For non-compliance with the Law.

BG

Up to EUR 20,000,000

Or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.

CRO

-

Act on Implementation of the GDPR provides administrative fines as provided under the Article 83 of the GDPR i.e. different levels/amounts depending on the type of violation/ violated provision of the GDPR

MAC

EUR 1,000 - 2,000

Consequences in case of non-compliance is monetary fine in the amount between 1.000 EUR to 2.000 EUR in Denar⁶ counter-value for the legal entity - controller and fine in the amount of 30% of the determined fine for the legal entity shall be imposed on the responsible person in the legal entity.

Unlawful conduct: potential pecuniary fine or imprisonment up to 1 year. For officials – imprisonment of 3 months to 3 years.

MNE

EUR 500 - 20,000

For non-compliance with the PDPL.

Unlawful conduct: potential pecuniary fine or imprisonment up to 1 year.

SER

EUR 420 - 8,300

For non-compliance with the PDPL.

Unlawful conduct: potential pecuniary fine or imprisonment up to 1 year.

SLO

-

Provisions of Slovenian Data Protection Legislation have been repealed by the provisions on imposing administrative fines of the GDPR.

Unlawful conduct: potential imprisonment for minimum 1 up to 5 years.

⁵ Approximate counter value of the initial EUR amount

⁶ The denar is the currency of Republic of Macedonia, internationally abbreviated MKD.



Data Breach Notification

ALB

Not compulsory

BiH

Not compulsory

BG

Compulsory

Mandatory within 72 hours after the controller having become aware of it in accordance with Art. 33 GDPR.

CRO

-

As provided under the GDPR, Chapter IV, Section 2 ("Security of Personal Data").

MAC

Compulsory

MNE

Not explicitly regulated

However, the data controller has the obligation to inform data subjects on the data processing as well as on the user of the personal data and the legal ground for such data transfer.

SER

Not explicitly regulated

However, the data controller has the obligation to inform data subjects on any circumstances the withholding of which (either from the data subject or a third party) would be contrary to conscientious treatment.

SLO

Compulsory

Is now compulsory under provisions of the GDPR



Marketing

ALB

Law no. 9902, dated 17.04.2008 "On the consumers' protection", published in the Official Gazette no. 61/2008, as amended by law no. 10444, dated 14.07.2011 and law no. 15/2013, dated 14.02.2013;

Law no. 10128, dated 11.05.2009 "On the electronic commerce", published in the Official Gazette no. 85/2009, as amended by law no. 135/2013, dated 29.04.2013;

Instruction of the Commissioner no. 16, dated 26.12.2011 "On the protection of personal data in direct commerce and the security measures", as amended by instruction of the Commissioner no. 29, dated 27.12.2012;

Instruction of the Commissioner no. 6, dated 28.05.2010 "On the correct use of SMS for promotional purposes, advertising, information, direct sales, through mobile phone"

BiH

Law on Protection of Personal Data ("Official Gazette of Republic of Srpska" nos. 49/06, 76/11 and 89/11, the "Law");

Commercial Communications Codex ("Official Gazette of BH" no. 3/16);

Law on Consumer Protection in Bosnia and Herzegovina ("Official Gazette of BH" nos. 25/06 and 88/15).

BG

GDPR

Electronic Commerce Act (State Gazette no. 51/2006, last update no. 57/2015)

Electronic Communications Act (State Gazette no.41/2007, last update no. 28/2018)

CRO

GDPR

Act on Implementation of the GDPR (Official Gazette No. 42/18)

Act on Forbidden Marketing (Official Gazette No. 43/09)

Electronic Media Act (Official Gazette No. 153/09, 84/11, 94/13 and 136/13)

Act on Electronic Trade (Official Gazette No. 173/03, 67/08, 36/09, 130/11 and 30/14)

Consumers' Protection Act (Official Gazette No. 41/14, 110/15)

MAC

Law on personal data protection (Official Gazette No.7/05; 103/08;124/10; 135/11; 43/14; 153/15; 99/16)

Law on consumer protection (Official Gazette No. 9/2005; 64/11; 109/11; 4/13; 196/14; 206/15; 49/16; 192/16)

MNE

Consumer Protection Law (Official Gazette of Montenegro no. 2/2014 and 6/2014);

Electronic Trade Law (Official Gazette of the Republic of Montenegro no. 80/2004, Official Gazette of Montenegro no. 41/2010, 40/2011 and 56/2013);

Personal Data Protection Law (Official Gazette of Montenegro no. 79/2008, 70/2009 and 44/2012).

SER

Consumer Protection Law (Official Gazette of the Republic of Serbia no. 62/2014 and 6/2016);

Electronic Trade Law (Official Gazette of the Republic of Serbia no. 41/2009 and 95/2013);

Personal Data Protection Law (Zakon o zaštiti podataka o ličnosti, Official Gazette of the Republic of Serbia no. 97/2008, 104/2009, 68/2012 and 107/2012).

SLO

Consumer Protection Act (Official Gazette 98/04 et seq.)

Electronic Commerce Market Act (Official Gazette No 96/09 – official consolidated version and No 19/15)

Electronic Communications Act (Official Gazette no. 109/12 et seq.)

Personal Data Protection Act (Official Gazette of the Republic of Slovenia no. 94/07 - official consolidated version)

04

Our Regional Data Protection & Privacy Team

Key Contacts

Cross-border transactions and knowledge sharing are the heart of our alliance. To ensure top quality service and a unified approach we have established practice area/industry specific teams spanning across the region. This allows us to deliver commercial and cost-effective advice and to provide a unique service that other legal networks don't offer.



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