

REGULATION

ON SUPERVISION INSPECTION REGARDING PROTECTION OF PERSONAL DATA

I. GENERAL PROVISIONS

Article 1 (Subject)

This Regulation lays down the rules for conduct of supervision inspection by the Agency for Personal Data Protection in Bosnia and Herzegovina (hereinafter: the Agency) in order to ensure application of the provisions of the Law on Personal Data Protection in Bosnia and Herzegovina (hereinafter: the Law) and other regulations on processing of personal data, jurisdiction, responsibility and manner of conduct of supervision inspection, rights and duties of inspectors, minutes on supervision inspection and manner of pronouncing administrative measures, records on completed supervision inspection, as well as other issues related to supervision inspection.

Article 2 (Definitions)

1. The terms used in this Regulation bear the following meanings:
 - a) **Supervision inspection:** the procedure by which direct insight is carried out into the legality of the work and treatment by controllers and processors in order to check compliance of their work with the Law and other regulations relating to processing and protection of personal data;
 - b) **Inspector:** a technical adviser for supervision inspection authorized by the Agency to conduct supervision inspection in the field of protection of personal data;
 - c) **Subject of inspection:** scope of activities of the controller and the processor;
 - d) **Inspector's card:** the document that certifies the official authority, identity and powers of inspector prescribed by the law;
 - e) **Power:** list of rights and duties that the inspector is authorized to undertake while conducting the supervision inspection;
 - f) **Inspection program of work:** the document that provides the time limits and frequency of the supervision inspection.

Article 3 (Purpose of supervision inspection)

- (1) The supervision inspection makes a direct insight in the legality of work and treatment by controllers and processors, implementation of administrative measures for prevention and elimination of illegal application of regulations in the area of protection of personal data.

(2) The supervision inspection has also preventive purpose to induce discipline in application of regulations in the area of protection of personal data and processors.

II. JURISDICTION, RESPONSIBILITY AND MANNER OF WORK OF INSPECTION

Article 4 (Jurisdiction)

(1) The activities of supervision inspection in the protection of personal data are conducted by inspectors.

(2) Inspectors are civil servants with special authorities, independent in their work and implementation of supervision inspection in the area of protection of personal data within their authorities.

(3) Inspectors have right and duty to do the direct check of business premises and other facilities for processing of personal data, the process of work, personal documents and other documents. They also perform other activities in line with the purpose of supervision inspection.

(4) All controllers and data processors are obliged to enable to inspectors without any hindrance to supervise and look into the required data and materials, to supply necessary information and data of importance to supervision.

(5) If inspectors are impeded to conduct their inspection activities or supervision or they are physically threatened, or such threat is likely to be expected, the inspector may ask for police assistance.

(6) The inspector shall keep as secret to a specified level of confidentiality all data he finds out while conducting inspection or check.

Article 5 (Persons responsible for inspection)

(1) The assistant director in the Sector for supervision inspection, complaints and the Main registry is responsible for unhindered and independent work of inspectors.

(2) The Chief of Division for supervision inspection and complaints is responsible for preparation of analysis and programs of work, drafting proposals of supervision inspection and supervises their execution.

(3) Inspectors are responsible for lawful and efficient conduct of supervision inspection within scope of their responsibilities, as well as for meeting other obligations prescribed by the Law and other regulations.

Article 6
(Manner of launching supervision inspection procedure)

- (1) The supervision inspection may be launched based on the inspection program of work, complaint of the data subject and request by the Agency Director.
- (2) Pursuant to the inspection program of work the supervision inspection is launched by the inspector according to approved program of work of supervision inspection and the issued request.
- (3) The supervision inspection upon complaint is launched based on the filed complaint by the data subject and the issued request.
- (4) The supervision inspection may be launched based on the order of the Agency Director and in other justifiable cases when there is suspect in legality of activities related to processing personal data.

Article 7
(Conduct of supervision inspection)

- (1) The procedure of supervision inspection is conducted by inspectors in line with their duties.
- (2) It is necessary to launch the supervision inspection procedure in line with duty in accordance with the manner specified in the Article 6 of this Regulation.

Article 8
(Manners of conduct of supervision inspection)

The supervision inspection is conducted:

- (a) By undertaking inspection activities aimed at assessing the situation in the area of processing and protection of personal data;
- (b) By determining administrative measures for prevention and elimination of illegal activities in application of regulations in the field of processing and protection of personal data;
- (c) By undertaking other measures and activities provided by the Law, other regulations and by this Regulation.

Article 9
(Inspection Program of work)

- (1) The supervision inspection is generally conducted in compliance with: annual and monthly inspection programs of work.

(2) The annual inspection program of work includes the survey of all areas to be encompassed by regular supervision inspection in a specific calendar year.

(3) The proposal of the annual inspection program of work for the following year is made by the assistant Director in the Sector for supervision inspection, complaints and Main registry, not latest than the end of November of the current year, and it is approved by the Agency Director.

(4) The monthly program of work includes survey of individual inspections with exact data on controllers.

(5) The monthly inspection program of work for the following month is made by the Head of the Division for supervision inspection and complaints not latest than the 10th day of the current month, and it is approved by the assistant Director in the Sector for supervision inspection, complaints and Main registry.

Article 10

(Supervision inspection upon complaint)

(1) Upon complaint filed by the data subject, the Agency undertakes appropriate measures and activities in order to establish the soundness of the complaint.

(2) The supervision inspection shall be conducted if the case, upon the complaint, cannot be resolved based on existing facts and evidence.

Article 11

(Order for supervision inspection)

(1) The order for supervision inspection is issued in writing and it contains:

- a) The name of the person who issued the order, number and date;
- b) The name of the controller or the data processor (seat and address) where the supervision inspection shall take place;
- c) The purpose of supervision inspection;
- d) The subject of supervision inspection;
- e) Legal ground for conduct of supervision inspection;
- f) The name and surname of the inspector who will conduct supervision inspection;
- g) The starting date of supervision inspection;
- h) The signature of the order issuer;

(2) The order for supervision inspection is shown in the form no. 1 and is an integral part of this Regulation.

Article 12

(Written notification of supervision inspection)

(1) The supervision inspection involves the written notification to the controller or data processor where the inspection is to be conducted.

(2) The notification shall be sent at least five days before the respective date for the supervision inspection and it contains: purpose, time, place and tasks of the supervision inspection, executives and presence of authorized persons by controllers or data processors where the inspection is to be conducted.

(3) The notification of the supervision inspection shall not be delivered to in advance to the controller or data processor if the purpose of the supervision inspection is at risk.

(4) In the case from the paragraph (3) of this Article, the written notification of the supervision inspection shall be delivered to the controller or the data processor immediately before the start of the supervision inspection execution.

Article 13

(Types of supervision inspection)

(1) Supervision inspection may be: regular, special and revision

(2) The regular supervision inspection is conducted in accordance with the inspection annual and monthly programs of work.

(3) The special supervision inspection is conducted in cases from the Article 6, paragraphs 3 and 4 of this Regulation.

(4) The revision supervision inspection is conducted after the regular and special supervision inspection in order to verify the follow-up of required administrative measures.

(5) The supervision from the paragraph (4) of this Article is conducted after expiry of the deadline established by the decision for removal of found defects, but not latest than 30 (thirty) days upon completed regular or special supervision inspection.

(6) The manner of execution of special and revision supervision inspection is the same as for the regular supervision inspection.

(7) The supervision inspection can be conducted as an individual supervision inspection, when one inspector assesses one or more inspection elements or as a team supervision inspection when several inspectors assess all or a number of inspection elements.

(8) If it is necessary that several inspectors conduct simultaneous supervision inspection (team inspection), one inspection order is issued for all inspectors.

(9) All types of supervision inspection in the phases of preparation, execution, monitoring, undertaking measures, reporting, recording, analysis or keeping data on supervision inspection, shall be carried out in line with the Law, Law on Administration and this Regulation.

III. RIGHTS AND DUTIES OF INSPECTOR

Article 14 (Rights of inspectors)

While conducting the supervision inspection, the inspectors have the right to directly do the following:

- a) To enter all premises for processing of personal data. Entrance and control of assets and the room of the controller or the data processor, which are not provided by the law, may be carried out only during the working hours;
- b) To request from the controller or the data processor to submit for review any document or records containing personal data, and supply any information on any issue whatsoever upon request;
- c) Upon noticing an illegally processed personal data to request from the controller or data processor to terminate such processing and order other measures that the controller is liable to undertake with no delay and notify the Agency thereon in written form within 15 (fifteen) days.

Article 15 (Duties of inspectors)

- (1) The inspector shall notify the responsible person of the controller or the data processor on execution of the supervision inspection.
- (2) If the inspector finds faults or irregularities regarding protection of personal data, he/she is obliged to notify thereon the responsible person of the controller or data processor from the paragraph (1) of this Article.
- (3) During the supervision inspection the inspector is obliged to enable presence of the person employed with the controller or the data processors to all inspection activities and allow their views on facts and circumstances for establishing full and correct factual situation and protection of rights and legal interests of the controller or data processor.

IV. MINUTES ON SUPERVISION INSPECTION AND MANNER OF PRONOUNCING ADMINISTRATIVE MEASURES BY INSPECTORS

Article 16 (Minutes on supervision inspection)

- (1) Upon completed supervision inspection the inspector shall make the minutes containing the factual situation identified by the supervision inspection.
- (2) The minutes is made by the inspector who did the supervision inspection or the inspectors in case of team supervision inspection.
- (3) The minutes is made immediately, in the course of the supervision inspection.
- (4) During complex supervision inspection the minutes may be made in the official premises of the Agency within three days from the date of completion of the supervision inspection.
- (5) The minutes is made in three identical copies, one copy delivered immediately upon the completed inspection to the responsible person with whom the supervision was carried out, and the inspector keeps two copies of the minutes for official purposes.
- (6) The minutes is a public document, except for the minutes and the part of the minutes containing official confidential data.
- (7) The controller or the data processor with whom the inspection was carried out has right to lodge a complaint on the minutes immediately at making of the minutes or if the minutes is delivered subsequently as set forth in the paragraph (4) of this Article, within three days from the receipt of the minutes.
- (8) The form and the content of the minutes is shown in the form 2 and it makes an integral part of this Regulation

Article 17

(Undertaking of administrative measures)

- (1) When the inspector find out during his inspection that there was a breach of the law or bylaws he is supervising, he has right to and shall order the following measures:
 - a) To remove the identified violations and faults within 15 (fifteen) days;
 - b) To block, delete or destroy the personal data, temporary or permanent measure of ban of processing, to warn or remind the controller or the data processor;
 - c) To forbid the processing of the personal data, which is contrary to the basic principles of legal personal data processing and rights of the data subject prescribed by the Law;
 - d) To pronounce and enforce a fine to be paid to him/her on the sight;
 - e) To undertake other administrative measures or acts for which he/she is authorized by the law;

(2) The inspector shall follow up the execution of the administrative measures from the paragraph (1) of this Article, and ensure their execution ordered by the decision and within limits of his/her powers;

(3) If the inspector cannot ensure the execution of administrative measures in the manner and within the term defined in the decision, he/she shall, with no delay, inform the chief of the controllers or data processors thereon, who will then undertake measures in order to ensure execution of the ordered measures.

(4) If the inspector finds out that the violation of the law or other regulation concerns the breach of the working duty, the offence, the economic violation or crime, he/she shall, with no delay, submit a request for establishing responsibility for the work duty violation or offence commitment or file an application for the economic violation commitment or the crime.

Article 18 (Preventive activities)

The inspector may undertake appropriate preventive measures in order to prevent the possible damaging consequences due to faults and irregularities in the enforcement of the Law, other laws and regulations governing the personal data processing, such as ;

- a) Warning to the controller or the data processor about the duties prescribed by the above mentioned regulations;
- b) Briefing on damaging consequences;
- c) Suggesting measures for removal of their causes etc.;
- d) Other preventive activities.

Article 19 (Decision)

(1) The decision by which the inspector orders execution of specific activities from the previous article must be in written form and it must contain the following :

- a) The Agency's memorandum;
- b) The number from the Agency's protocol and the date of the decision making;
- c) The introduction of the decision containing: the provisions of the regulations on the Agency's competence for making decisions and the reference of the proceeding subject;
- d) Title: Decision;

- e) The decision dispositive containing :
 - 1) The name of the controller or the data processor to whom specific activities are ordered to be carried out ;
 - 2) The activities ordered to be executed by the decision ;
 - 3) The deadline for the activities execution ;
 - 4) The fact that the controller shall notify the Agency on the conducted activity within 15 days from the receipt of the decision ;
- f) Title: Explanation ;
- g) The explanation of the decision containing:
 - 1) The ground for conduct of the supervision and its subject;
 - 2) The time of execution of the supervision inspection;
 - 3) The identified factual situation and statement on the nature of the violation of the regulations ;
 - 4) The statement that the controller or the data processor have received the minutes on completed inspections supervision ;
 - 5) The statement that the controller or the data processor lodged or did not lodge a complaint against the minutes ;
 - 6) The statement that the complaint was affirmed in case the controller or the data processor lodged a complaint against the minutes, and if the complaint was not affirmed the reasons for such denial are given and information if such inspection act requested consideration of additional facts and information on their impact on the issued decision ;
 - 7) Lesson on the legal remedy ;
 - 8) Signature and stamp.
- (2) The decision is made in three identical copies, one copy delivered to the controller with whom the supervision was carried out, and the Agency keeps two copies of the decision for official purposes.

Article 20
(Legal remedy)

(1) The controller has right to file an appeal against the decision from the Article 19 of the Regulation, to the director of the Agency, within 8 days from the receipt of the decision.

(2) The decision upon the appeal must be made within 15 (fifteen) days from the receipt of the appeal.

(3) The administrative suit can be instituted against the decision from the paragraph (2) of this article, before the Court of Bosnia and Herzegovina.

Article 21

(Application of administrative measures)

(1) When an administrative measure concerns the activities that must be carried out in specific time limit, the controller who was ordered to undertake the measure shall immediately notify the Agency in written form on completed activity, not later than 15 (fifteen) days from the receipt of the decision.

(2) The notification on execution of specific activities may be delivered orally upon the minutes made by the inspector who conducted the supervision inspection.

(3) The inspector must officially, as his duty, follow up and confirm the execution of the administrative measure.

(4) The inspector confirms the execution of the administrative measure based on the revision inspection or other evidence and makes a special minutes or official note thereon.

V. RECORDS

Article 22

(Records on completed inspection reviews)

The records on completed inspection reviews is maintained on the forms prescribed by the Regulation on form and content of the inspector's official card of the public administration of Bosnia and Herzegovina and content and manner of keeping records on completed supervision inspection ("Official Gazette of BiH", no. 34/05).

VI. TRANSITIONAL AND FINAL PROVISIONS

Article 23

(Amendments to Regulation)

Article 24
(Entry into force)

This Regulation shall enter into force on the eighth day following the date of its publication in the "Official Gazette of Bosnia and Herzegovina".

Classification no.: 03-1-02-2-148/09
10 June 2009
Sarajevo

Director
Petar Kovacevic

BOSNIA AND HERZEGOVINA
Agency for Protection of Personal Data
In Bosnia and Herzegovina
S A R A J E V O

Number: /09

Date:

ORDER FOR SUPERVISION INSPECTION

1. The supervision inspection is to be conducted in:

(the name of the controller or the data processor, seat and address)

2. The subject of supervision inspection:

3. The legal grounds for execution of the supervision inspection:

4. The supervision inspection shall be conducted by the inspectors:

(the name and the surname of the inspector)

(Official ID card number)

(the name and the surname of the inspector)

(Official ID card number)

5. The supervision inspection shall be carried out:

(Stamp)

Director

BOSNIA AND HERZEGOVINA
Agency for Protection of Personal Data
In Bosnia and Herzegovina
S A R A J E V O

Number: /09

Date:

M I N U T E S
On completed supervision inspection

Made on: day and year. starting at: time /hour/

In the case

With the controller or data processor

In presence of the authorized person:

According to the plan of supervision inspection:

The inspection was made by:

(the name and the surname of the inspector and official ID card number)

The supervision inspection found out the following situation:

The minutes was read by _____

And had-did not have any objection to it

The supervision inspection was completed at: time

This minutes is made in 3 identical copies, one for the controller or data processor, and other copies are kept for the Agency's official purposes.

Authorized person

Inspector

Sarajevo, Vilsonovo setaliste 10
Tel. ++387 33 713 935, Faks: 214 169

Pursuant to the Article 16 and the Article 61, paragraph 2 of the Law on administration ("Official Gazette of BiH", number 32/02) and the Article 40, paragraph 2, item d) of the Law on Protection of Personal Data in Bosnia and Herzegovina ("Official Gazette of BiH", number 49/06), the Director of the Agency for Protection of Personal Data in Bosnia and Herzegovina) brings the following