

AMENDMENTS TO THE LAW ON PERSONAL DATA PROCESSING AND PROTECTION OF PRIVATE LIFE IN THE ELECTRONIC COMMUNICATIONS SECTOR

Law no. 235/2015 for the amendment and supplementation of Law no. 506/2004 on the personal data processing and protection of private life in the electronic communications sector ("**Law 235/2015**") was published in the Romanian Official Gazette no. 767 of 14 October 2015 and entered into force on 17 October 2015.

The main amendments brought by Law 235/2015 refer to the access of certain public authorities to the data processed by providers of electronic communication public networks and by providers of electronic communication services intended for the public (the "**Providers**"), under conditions which should ensure that the right to privacy of individuals is guaranteed and protected.

Law 235/2015 introduces a new category of data, specifically the **equipment identification data**, which is defined as the Providers' technical data which facilitates the identification of the location of the Providers' communication equipment and is processed for the purpose of sending out a communication¹ through an electronic communications network or to invoice the consideration for such an operation.

Apart from the above mentioned definition, Law 235/2015 does not include any other provisions regarding the legal regime of equipment identification data or the Providers' obligation to process such data.

Under Law 235/2015, the traffic data² of subscribers and users, which is processed and stored by Providers, must be erased or anonymized when such data is no longer required for sending out a communication, but not later than three (3) years as of the performance of such communication.

Moreover, processing traffic data for determining the contractual obligations of subscribers of prepaid communication services is only allowed until the expiry of a three (3) year term from the date of a communication.

With respect to the access of public authorities to data processed by Providers, Law 235/2015 stipulates that Providers must make available traffic data, equipment identification data and geo-location data (collectively referred to as "**Accessible Data**"),

¹ i.e., any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service

² Under Law no. 506/2004 on the personal data processing and protection of private life in the electronic communication sector, **traffic data** represents any data processed for the purpose of sending out a communication through an electronic communication network or invoicing the consideration for such an operation.

to courts of law, criminal investigation bodies or State authorities in charge with national security and defense, upon request.

Criminal investigation bodies and State authorities in charge with national security and defense may request that Providers grant access to Accessible Data **only based on prior court authorization**. This provision of Law 235/2015 aims at ensuring the protection of individuals' right to privacy and avoiding abusive access and use of Accessible Data.

All data access requests from the abovementioned authorities must be treated as confidential.

Accessible Data will not be erased or anonymized by Providers if the competent authorities request the keeping thereof for the purpose of identifying and preserving evidence in any investigations related to criminal control or national security and defense matters. Such a request by the authorities may be made within the same request to access the Accessible Data or in a separate and subsequent request. Storage of the Accessible Data under these conditions is allowed only so long as the initial grounds for such request exist, but no longer than five (5) years as of the date when the request was filed or until a court of law provides a final ruling on the matter.

For any questions or additional details with respect to the above mentioned amendments, please do not hesitate to contact us.

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If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with the contacts listed above, or with:

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