

COVID-19 OUTBREAK - LEGISLATIVE MITIGATION MEASURES IN GREECE & PERSONAL DATA PROTECTION ISSUES

As the COVID-19 crisis escalates around the world, the Greek state has adopted and continues to introduce a large number of legislative measures to support affected businesses, their employees and self-employed professionals compelled to suspension in the provision of their services due to the State's lockdown.

Supportive Measures applying to businesses ordered to suspend their operations by governmental decision dated 20.03.2020 or whose business is severely impacted

↳ **40% decrease in the rent of March and April 2020 for commercial leases of any type of business premises (applicable only to those ordered to suspend).**

Applicable stamp duty or VAT will be calculated on the reduced rent. The Lessor shall not be entitled to exercise the right to terminate the lease agreement or file a relevant civil claim, provided that the Lessor has received notification by the Lessee that the latter has filed in the ERGANI system the official application required under the decision in order to benefit from the 40%-reduction of the rent.

↳ **Flexibility in the workplace / Supportive Measures applied to Employment Contracts.**

- **Working in a "Safe-Mode".** During the COVID-19 crisis remote working is highly encouraged. In any case, for a maximum of six months as of 20.03.2020, employers may, at their own discretion, arrange the operation of their business as follows: (i) each employee may work for a minimum of 2 weeks per month; (ii) a respective work time schedule shall be conducted on a weekly basis and shall include at least 50% of the total staff; (iii) employers who make use of such measure shall maintain the same number of employees; (iv) employers should comply with respective procedural formalities through the ERGANI electronic system.
- **Intragroup transfer of employees.** Employers who have suffered a temporary lockdown of their businesses under the legislative act dated 20.03.2020, may transfer employees to other companies of the same group, provided they maintain the same number of employees.
- **Suspension of employment contracts & Prohibition of staff dismissals.** Employers ordered to suspend their businesses by the relevant legislative act or whose business has severely been affected, may suspend the employment contracts of all or part of their

employees for a period of one (1) month (from 21st of March until 20th of April), which may further be extended by a ministerial decision. During the suspension period, the employer is prohibited from making any dismissals.

- **Special State Financial Support.** Employees whose employment contracts have been suspended as above mentioned are entitled to a special state benefit of Euro 800, which will be payable in April, covering 45 days of business suspension (ending on 30.04.2020). The same state benefit shall also be granted to employees who have been dismissed or have resigned during the period from 01 to 20 March 2020. In order to receive the aforementioned benefit, both the employer and the employees must submit a respective application form in the ERGANI platform **by the 10th of April 2020**, following the procedure described in detail in the relevant legislative acts. Employers who have suspended their businesses as above, are released from the obligation to pay salaries and social security contributions to their employees, who shall be granted the aforementioned special state benefit.
- **Extension of the deadline for the payment of the Easter Allowance to employees of legal entities ordered to a suspension of their operation or impacted by the COVID-19 crisis, until 30.06.2020.**

Suspension Arrangements of Tax & Social Security Liabilities

↳ **Extension of payments of assessed tax liabilities, installments of settlements schemes and VAT.**

The payment of the aforementioned tax liabilities is extended until 31.08.2020. This provision covers amounts payable during the period from 11.03.20 until 30.04.20. During the suspension period, no interest and surcharges shall be imposed on the amounts of taxes due. By a new legislative act issued on 30.03.2020, assessed taxes or installments of settlement schemes due and payable during the period from 30.03.20 until 30.04.20, shall be offered a 25% discount on the amount due and payable, provided they are paid timely until the due date for their payment. Excluded from the above discount benefit are VAT tax liabilities and withholding taxes which are not subject to a beneficial settlement scheme.

↳ **Suspension of payment of social security contributions and installments of settlement schemes.**

This suspension applies to legal entities ordered to suspend their operations by a legislative act and concerns the specific period of temporary suspension due to the COVID-19 crisis. As regards the payment of social security contributions for February 2020, a 3-month suspension period for their payment is granted, provided that there is no change in the existing number of employees of the legal entity.

↳ **25% discount on the social security contributions of the self-employed professionals**

for February and March 2020, provided they are timely paid.

According to art.18 of the legislative act issued on 30.03.2020, the self-employed professionals, who do not intend to make use of the 3-month suspension benefit for the payment of their social security contributions due as of February 2020, may proceed to the timely payment of their social security liabilities reduced by 25%, as per the aforementioned provision.

↳ **Acceleration of tax refunds of amounts up to 30.000,00 Euro by tax authorities.**

This concerns pending income tax and VAT audit cases for natural persona and legal entities, provided that no temporary tax assessment act has been issued as of the 20.03.20.

↳ **Extension of the deadline for the filing of tax returns.**

The extension concerns the filing of the annual list of customers-suppliers for 2019 (extended until 30.06.20) and the filing of lease contracts' notifications via TAXIS for new lease contracts and amendments executed from 01.02.20 until 30.04.20. (extended until 30.06.20).

↳ **The service of tax decisions on provisional and final tax determination or penalty issued under L.4174/2013 is suspended until 30.04.20.**

Similar deadlines provided in the Code for Fiscal Procedure are extended or suspended accordingly, pursuant to art.6 of the legislative act dated 30.03.20. It should be noted that according to art.6 par.6 of the aforementioned legislative act the deadlines of the limitation period for the raise of a claim by the tax administration for the issuance of tax determina-

tion decisions or penalties expiring in the period commencing on 30.03.20 and ending on 31.05.20 are extended until 31.07.20.

Prohibition of short selling by virtue of a decision of the Hellenic Capital Market Commission dated 17.03.2020.

The prohibition is effective as of 18.03.2020 and will last until 24.04.2020. This measure applies not only to the sale of shares, but also to related financial instruments incl. options, futures, certificated linked to shares etc.

Suspension of Court Proceedings, with the exception of urgent civil and criminal cases, and suspension of the operation of the Courts' Secretariat until 10.04.2020.

During the suspension period, which is expected to be further extended, deadlines for court filings are suspended accordingly, and at the same time enforcement measures (e.g. auctions, seizures etc.) are restricted.

Beyond presenting the supportive measures, it is important to examine whether the exceptional restrictive legislative orders affecting human rights and freedoms, in particular the right to privacy, are consistent with GDPR and the respective national data protection legislation.

Processing of Personal Data in the context of the COVID-19 outbreak

↳ In response to concerns regarding data protection in the context of national measures adopted for the purpose of management and mitiga-

tion of COVID-19, the European Data Protection Board (“EDPB”) issued a relevant statement on 19/03/2020. Therein the EDPB underlined that, even in this exceptional health crisis, the data controller and processor **must guarantee the lawful processing of personal data and, in all cases, any relevant restrictive measure must respect the general principles of art.5 GDPR (in particular, lawfulness, transparency, purpose limitation, retention period accuracy, data minimization, security, confidentiality, etc.). must be proportionate and limited to the emergency period.**

- With regard to the ***processing of personal data, including special categories of data*** (i.e. data concerning the health of the data subject) ***by competent public authorities (e.g. public health authorities)***, the EDPB considers that art.6 and 9 GDPR enable the processing of personal data, in particular when it falls under the legal mandate of the public authority (e.g. ***when processing is necessary for reasons of substantial public interest in the area of public health, art.6(1)e GDPR and 9(2)i GDPR***) in accordance with national law and within the conditions set in the GDPR.
- With regard to ***processing of mobile location data by the Member State governments***, public authorities should **FIRST** seek to **process location data in an anonymous way (i.e. processing data aggregated in a way that individuals cannot be re-identified).** ***When this is not possible, the***

ePrivacy directive¹ enables Member States to introduce legislative measures to safeguard public security (art.15), provided that the State has at the same time put in place adequate safeguards, such as granting individuals of electronic communication services the right to a judicial remedy. The least intrusive measures should always be preferred, taking into account the specific purpose to be achieved (**the proportionality principle in terms of duration and scope of the measure, limited data retention and purpose limitation, shall apply**). Moreover, it should be noted that ***such exceptional legislation is subject to the judicial control of the European Court of Justice and the European Court of Human Rights.***

- ***In the employment context***, employers may obtain and process personal data of their employees, provided this is necessary in order to fulfill their obligations relating to health and safety at the workplace, such as the control of diseases and other threats to health. Art.9(2)c. GDPR stipulating a derogation to the prohibition of processing of certain special categories of personal data, where there is the need to protect the vital interests of the data subjects, shall apply. Under this provision, employers should also inform staff about COVID-19 cases and take protective measures, but should not communicate more information than necessary. In cases where it is necessary to reveal the name of the employee(s) who contracted

¹ Law 4070/2012 (amending L.3471/2006) transposed in the Greek national law the ePrivacy Directive 2009/136 (amending the original ePrivacy Directive 2002/58/EC).

the virus (e.g. in a preventive context) and the national law allows it, the concerned employee(s) shall be informed in advance and their dignity and integrity shall be protected.

- ↳ In line with the EDPB statement, the Greek Data Protection Authority issued a notice on 18.03.2020 (that is a day earlier than the respective EU authority) in the form of Guidelines focusing on data processing in employment relationships during the COVID-19 crisis. It remains to be seen, whether the EU Data Protection Authorities (incl. the Greek DPA) shall evaluate compliance of governmental measures with GDPR and relevant national legislation in the coming months.
- ↳ Pursuant to art.29 of the Legislative Act dated 30.03.2020, a National Registry of COVID-19

Patients is established and shall operate according to the detailed provisions of the above article. Personal data of the registered COVID-19 patients shall be processed by the Ministry of Health (data controller), acting for this purpose in collaboration with IDIKA SA (e-Government Centre for Social Security Services) (data processor). The competent public authorities (as aforementioned) are obliged to adopt pseudonymization or anonymization techniques provided under GDPR and national data protection legislation in order to protect the data subject (COVID-19 patient) against any illegal disclosure of his/her identity.
