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Law 5002/2022 regarding the procedure for the lifting of communications secrecy, cybersecurity and data protection and its recent amendments (Law 5046/29.07.2023)

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# Law 5002/2022 regarding the procedure for the lifting of communications secrecy, cybersecurity and data protection and its recent amendments (Law 5046/29.07.2023)

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## Introductory remarks

On 09.12.2022, Law 5002/2022 was published in the Greek Government Gazette (A' 228) under the title "*The procedure for the lifting of communications secrecy, cybersecurity, and citizens' data protection*".

According to the explanatory statement, the said Law aims -amongst others- at (a) shielding and modernizing the process of lifting communications secrecy in accordance with Article 19.1 of the Greek Constitution; (b) optimizing the operation of the National Intelligence Service; (c) safeguarding the privacy of communications against tracking software; (d) upgrading Greece's cyber security level; and (e) effectively protecting individuals against personal data processing.

## The recent amendments

Soon after the entry into force of the said Law, the latter was amended by virtue of Law 5046/2023, which was adopted on 29.07.2023. This recent amendment (Article 44 of Law 5046/2023) extends the criminal offenses for which the lifting of communications secrecy is allowed, by also adding the criminal offences of interference with road traffic, public transportation, vessel and aircraft traffic.

The mentioned revisions were prompted by a recent tragedy in Northern Greece, following

the collision between two trains which resulted in numerous deaths and injured parties.

## The main provisions of Law 5002/2022

In a nutshell, Law 5002/2022 (as amended) contains provisions regarding:

- *The redefining the legal framework regarding the lifting of communications secrecy;*
- *The reassessment the crimes for which the lifting of communications secrecy may be allowed;*
- *The adjustment of penalties threatened in cases of unlawful breach of communications secrecy;*
- *The reorganization of the National Intelligence Service;*
- *Cybersecurity; and*
- *The framework regarding data privacy protection.*

In particular:

### *(a) The lifting of communications secrecy*

In principle, the confidentiality and secrecy of communications is explicitly protected by Article 19.1(a) of the Greek Constitution. By way of exception, Article 19.1(b) of the Greek

Constitution provides that this secrecy can be lifted only for national security reasons, detection of severe criminal offences and safeguarding the judicial authority.

Law 5002/2022, which replaced the previous long-standing Law 2225/1994, lays down the specific procedure and legal requirements for In particular, Law 5002/2022 allows the lifting of communications secrecy **only for the sake of national security, which encompasses** safeguarding the essential functions of the state and the core interests of Greek citizens. This includes matters related to national defense, foreign policy, energy security and cyber security, **and the detection of severe criminal offences**, which include felony offences against the State and Democracy, money laundering, physical integrity and freedom of a person, corruption offences, fraud, and embezzlement, as well as misdemeanor offences related to espionage, criminal organization, human trafficking, sexual offenses against minors and pornography.

*(b) The procedure for the lifting of communications secrecy for national security reasons*

The procedure for the lifting of communications secrecy varies depending on whether the lifting concerns national security reasons or the detection of crimes.

When reasons of national security justify it, the **National Intelligence Service ('NIS')** and the **Unit Against Special Crimes of Violence of the Hellenic Police ('UASCV')** are the only authorities entitled to request the lifting of communications secrecy.

Nevertheless, if the request pertains to individuals in the political arena, only the 'NIS' will have the entitlement. More specifically, the **'NIS'** and **'UASCV'** may request from the

competent Public Prosecutor -either on their own initiative or following information transmitted by any other judicial, civil, military or police authority- to allow the lifting, by mentioning:

- *the reason(s) which pose a threat to national security;*
- *the necessity of the lifting of communications secrecy;*
- *The specific means of communication for which the lifting is requested;*
- *Whether the request refers to the actual content of the communication or just the external elements of such communication; and*
- *The territorial and temporal extent of the request.*

The said request must be **consecutively accepted by two Public Prosecutors** and shall have a one-year duration with a possibility of renewal for another year.

Upon the request of the individual in question, they have the right to be informed about the removal of their communication confidentiality three years after the expiration of the Public Prosecutor's order to lift, provided that the underlying reason for the removal is not compromised.

*(c) The procedure for the lifting of communications secrecy for the detection of crimes*

As regards the lifting of communications secrecy for the detection of crimes, the Judicial Council shall decide following a request by the Public Prosecutor. In case of urgency, the lifting can also be ordered by the Public Prosecutor or the Investigating Judge and their order must be ratified by the Judicial Council within three days.

The lifting order must mention the following:

- *The authority asking the lifting of communications secrecy;*
- *The criminal offence in question;*
- *The indications of guilt against the subject;*
- *The justification for the lifting of secrecy, especially the difficulty to solve the crime in any other way;*
- *The purpose of the lifting;*
- *Whether the request refers to the actual content of the communication or just the external elements of such communication;*
- *The territorial and temporal extent of the request;*
- *The date of issue of the Public Prosecutor's order (in case this was issued due to urgency); and*
- *The personal details of the subject.*

It is noted that the lifting can be ordered for an initial 2-month period which can be renewed with the same procedure up to a maximum of ten months (in total).

Equally as above, upon the subject's request, the latter has the right to be informed of the lifting of his/her communication secrecy sixty (60) days following the expiry of the Public Prosecutor's lifting order, provided that the reason for the lifting is not jeopardized.

#### *(d) Penalties threatened in case of unlawful breach of communications secrecy*

Law 5002/2022 significantly upgraded the criminal offences in cases of breach of communications secrecy.

In particular, the criminal offence of breaching oral and/or telephone communication, as well as the unlawful interference with private data is subject to a sentence of imprisonment of at least five (5) and up to ten (10) years.

Moreover, any person who produces, sells, or by any means forwards prohibited software and monitoring devices shall be punishable with imprisonment of at least two (2) and up to five (5) years.

#### *(e) National Intelligence Service*

Pursuant to the provisions of Law 5002/2022, the NIS is reorganized by the forming of an Internal Control Unit, a Press Office and an Intelligence and Anti-espionage Academy. Additionally, the NIS's powers and duties are redefined as the national INFOSEC.

Also, various other provisions are introduced regarding the NIS's management and Directorates.

#### *(f) Cybersecurity*

Law 5002/2022 also introduced provisions regarding cybersecurity. More specifically, a Coordination Committee is established regarding cybersecurity matters, the mission of which is to organize, monitor and coordinate actions to prevent and counter incidents of cybersecurity attacks. The said Committee shall consist of five members (employees or officials of the public sector), while the operation of working groups and agencies that assist and inform the Committee is also foreseen.

Moreover, a framework regarding the cooperation between the National Cyber Security Authority and the NIS is established for monitoring the threats-vulnerabilities of IT and communication systems.

Last but not least, a Security Operations Center ('SOC') is established within the Ministry of Digital Governance in order to process information and data and provide support in the process of identification, management and confrontation of cyber-attacks.

*(g) Data protection*

Law 5002/2022 also contains provisions amending Law 4624/2019 for the protection of the processing of personal data. In particular, the amendments relate to:

- *The expansion of the notion 'data controller';*
- *The disclosure of the details of the data controller of public entities to the Data Protection Authority;*
- *The safeguarding of lawfulness of the processing of personal data;*
- *The data subject's consent; and*
- *The public disclosure of personal data by the prosecution authorities.*

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