
6 May 2019

Analysis of the Slovenian GDPR Implementation Law in Light of its Main Deviations from, or Supplements to, Default Rules Set out in the GDPR

In Slovenia, a new proposal of the Personal Data Protection Act (hereinafter: “ZVOP-2”)¹ was published by the Ministry of Justice on 7 March 2019, with which the legislator aims to regulate at a national level the field of personal data protection and ensure the enforcement of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter: “**GDPR**”).² Notwithstanding that the GDPR is in the form of a directly applicable regulation that does not have to be adopted into national law in order to be effective, it provides Member States with a discretionary right in regulating some of the aspects of their respective national data protection regimes. In such a case, Member States may, as far as necessary for coherence and for making the national provisions comprehensible to the persons to whom they

¹ The Previous proposal of ZVOP-2 was published by the Ministry of Justice on 23 January 2018 – it was adopted by the Government of the RS on 5 April 2018, but was not discussed in the National Assembly of the RS due to its suspension on 14 April 2018.

² 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).

apply, incorporate elements of the GDPR into their national law. However, this applies only when the GDPR provides for specifications or restrictions of its rules by Member State law (Recital 8 of GDPR).

In the light of the above, it seems that Slovenia is likely to make a number of deviations from, or supplements to, the default rules set out in the GDPR. Below are a couple of the main deviations from, or supplements to the GDPR which, in my opinion, are worth looking at twice.

First, in the proposal of ZVOP-2 certain obligations are extended to data processors even though they are imposed by the GDPR only on the data controller. Such a situation stems from Article 7 of the proposal of ZVOP-2, which sets out the basic principles of the personal data protection, which imposes the ability to prove compliance of the processing of personal data on both, the controller and the processor, irrespective of the fact that this is explicitly the task of the controller under the GDPR.

Second, and which is in my view a problematic deviation from the default rules set out in the GDPR, is the fact that Article 12 of the proposal of ZVOP-2, which regulates the processing of special categories of personal data, provides that the processing of specific categories of personal data is permitted only if an individual expressly consents to it in writing. In contrast, Article 9 of the GDPR requires only the consent which does not need to be in writing and furthermore does not provide that the Member States may regulate it otherwise.

In addition to the abovementioned two major deviations of the proposal of ZVOP-2, in which the GDPR does not provide that such derogations are possible, in certain provisions the proposal of ZVOP-2 also contains a variety of different supplements to the default rules set out in the GDPR (i.e. certain new definitions, provisions, conditions and fines according to the GDPR).

To begin with, there are several new definitions such as the definitions of “public sector”, “private sector”, “national authority”, “public authority”, “security of the country” and “proportionality of processing”, which are contained in Article 6 of the proposal of ZVOP-2.

Further, it is also noteworthy that the proposal of ZVOP-2 includes specific provisions on providing personal data of the deceased to close relatives, the use of personal data for historical or scientific research, statistical or archiving purposes and furthermore, includes provisions about automated decision-making (Article 10, 44, 82, 83 and 84). In view of the additional provisions contained in the proposal of ZVOP-2, it is also necessary to mention

specific provisions on the use of public contact information, data for organizing events in the public sector (Article 126 and 127), special provisions with respect to the processing carried out in the context of freedom of expression (Article 85), public access to official documents (Article 86), further details on communication with data subjects and confirmation of their identity in the context of exercise of data subject rights (Articles 15-19) and last but not least specific provisions on the use of video surveillance in certain areas (Articles 111-115).

Third, in the light of the additional conditions, it is also worth mentioning that the proposal of ZVOP-2, pursuant to the GDPR, includes further conditions for processing of biometric data in the public and private sector and adds a provision concerning the prohibition of the acquisition of biometric personal data relating to marketing (Articles 116-118). Moreover, the proposal of ZVOP-2 includes further conditions for processing of data for direct marketing purposes (Articles 109-110), sets out conditions for the appointment of a data protection officer (Article 48) and establishes a lower age for the validity of the consent of a minor for the use of information society services – the consent is valid in case if it is given by a minor who is 15 years of age or older.

Finally, in accordance with the first paragraph of Article 84 of the GDPR, the proposal of ZVOP-2 specifies fines for violation of provisions on direct marketing (Article 136), video surveillance (Articles 137-141), biometrics (Articles 142-144) and specifies fines for a responsible person of the breaching organization (Articles 129-148). Additionally, the proposal of ZVOP-2 sets out a minimum fine of EUR 4,000 for violations of the provisions of the GDPR (Articles 129, 130) and sets a time limit of six months after the adoption of the Law during which controllers and processors must implement appropriate measures of adoption with the provisions of the adopted Law concerning the processing of a consent as a legal basis for the processing of personal data (Article 149).

In the light of the above, we can conclude that the Slovenian proposal of ZVOP-2 contains a number of deviations from, and supplements to the existing regulation in the GDPR. The list above however contains only the more striking examples, and I have chosen not to focus on some of the inadequacies of the draft law as they are not that pressing (for example, many of the provisions of the proposal of ZVOP-2 are merely copied from the GDPR *verbatim*, often the proposal of ZVOP-2 refers to the provisions of the GDPR,...). Having said that, it should be noted that the proposal of ZVOP-2 is currently still in progress and must be adopted by the National Assembly. The proposal has yet to be considered by the National Assembly and it is possible that the text will be changed considerably during the course of the legislative

procedure. The new ZVOP-2 will likely be passed in the second half of 2019, providing a clear picture of what the text of ZVOP-2 will be.

Author:

Urša Jerman, Junior Associate