

# LAW ON PERSONAL DATA PROTECTION

1.07

## WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Provide the Commissioner with better working conditions, equipment and staff to ensure an effective implementation of the new Law.	2009			√
Harmonize all laws with the Personal Data Protection Law.	2022			√
Enact/amend laws regulating special forms of personal data processing, such as video surveillance, employees' personal data processing and processing for scientific and historical research and statistical purposes.	2019			√
Amendments to the Personal Data Protection Law are necessary to: 1) provide for the recognition of the validity of binding business policies approved by the body responsible for the protection of personal data in the EU, 2) recognize the validity of the Personal Data Processing Agreement concluded by the controller with the processor from abroad using standard contractual clauses published by the European Commission and 3) recognize the validity of the Data Processing Agreement concluded in accordance with the GDPR in all respects. This would provide the same degree of protection and there would be no negative consequences for the protection of personal data of citizens of the Republic of Serbia, bearing in mind that the controller would still be liable under the domestic law.	2022			√
Article 65, paragraph 2, item 2 of the new Law should be amended in accordance with Article 46, paragraph 2, item c of the GDPR, judgment of the European Court (case C-311/18) and the new standard contract clauses under the GDPR for transfer of data from controllers or processors in the EU/EEA to controllers or processors based outside the EU/EEA issued by the European Commission on June 4, 2021, providing for the possibility of transferring personal data from the controllers to the controllers and from the controllers to the processors, as well as from a processor to a sub-processor, registered in third countries without the authorization of the Commissioner and in the internal market based on standard contractual clauses drafted by the Commissioner, based on the best European practice.	2022			√
Article 77 of the new Law should be amended and it should be provided for the obligation of the Commissioner to draft standard contractual clauses for the transfer of personal data between joint controllers, processors and controllers, as well as processors and sub-processors, applying the best European practice.	2021			√
More active adoption of guidelines by the Commissioner in order to facilitate the enforcement and interpretation of the Law, taking into account the practice of the Court of Justice of the European Union, competent data protection authorities of the European Union, and the guidelines of the European Data Protection Board.	2020			√
Adopt guidelines on the implementation of Articles 41 and 50 of the new Law; bezbednost obrade	2021			√
Adopt guidelines on the implementation of Article 53 of the Law (in which cases there is a high risk to the rights and freedoms of individuals).	2023			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend the Decision on the List of States, Part of their Territories or One or More Sectors of Certain Activities in Such States and International Organizations Considered to Provide an Adequate Personal Data Protection Level and modification of the wording "United States (limited to Privacy Shield)" and indicate the application of the Trans-Atlantic Data Privacy Framework.	2020			√
Enact conditions for issuing licenses to certification bodies by the Commissioner.	2020			√
Eliminate ambiguities from Article 60 of the new Law regarding the competence of competent bodies for accreditation of legal entities that supervise the implementation of the code of conduct.	2021			√
Active participation of the Commissioner in international cooperation and exchange of information with relevant data protection authorities in the European Union. This would enable Serbia to adhere to best practices and current standards regarding data protection, which is crucial for companies operating across borders.	2023			√
Adopt the Proposal for a Personal Data Protection Strategy for the period 2023-2030 and its accompanying action plan.	2023		√	

## CURRENT SITUATION

The Data Protection Act ("Official Gazette of the Republic of Serbia" no. 87/2018) (hereinafter: DP Act) has been in effect since 21 August 2019. The DP Act is, to a considerable extent, a translation of the EU General Data Protection Regulation 2016/679 (GDPR), excluding its recitals and with certain specificities reflecting the characteristics of the legal system of the Republic of Serbia.

The DP Act is based on seven data processing principles: lawfulness, fairness and transparency; purpose limitation; data minimisation; accuracy; storage limitation; integrity and confidentiality; and accountability of the controller for data processing. In order for processing to be lawful, it must be based on one of the six legal bases for processing: consent; contract; legal obligation; vital interests; public interest; or legitimate interests. The DP Act imposes stricter conditions for the lawful processing of special categories of data, which include, for example, health data. The DP Act grants data subjects broad rights. Data subjects have, inter alia, the right of access to data, the right to rectification, the right to have incomplete personal data completed, the right to erasure, restriction, and data portability, the right to object, and the right to withdraw consent.

The DP Act imposes a number of obligations on controllers and/or processors. Controllers and processors must imple-

ment appropriate technical, organisational, and personnel measures to ensure a level of security appropriate to the risk to the rights and freedoms of individuals. Controllers are required to report data breaches to the supervisory authority, and in certain cases, to inform the data subjects. The DP Act allows for the free transfer of data outside of Serbia to countries that are members of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, and to countries for which the European Union has determined provide an adequate level of protection (by adopting an "adequacy decision"). The transfer of data to other countries is permitted on the condition that the data exporter implements one of the prescribed safeguards (for example, the conclusion of standard contractual clauses, prepared by the Commissioner, with the data importer), or if one of the specific situations set out in the DP Act applies (for example, transfer based on the explicit and informed consent of the data subject).

Controllers and/or processors have a number of additional obligations under the DP Act, such as: appointing a data protection officer; keeping records of processing activities; contractually regulating relationships with processors and joint controllers; conducting data protection impact assessments if it is likely that a certain type of processing will result in a high risk to the rights and freedoms of individuals, and more.

The DP Act has extraterritorial application. The DP Act applies to controllers and processors in Serbia, and, under certain conditions, to those outside of Serbia as well, if they process data about individuals who have residence or domicile in Serbia.

Compared to the GDPR, the fines prescribed for violations of the DP Act are low. While the GDPR allows for fines of up to 20,000,000 euros, or in the case of a legal entity, up to 4% of the total worldwide annual turnover of the preceding financial year (whichever amount is higher), the fines under the DP Act range up to a maximum of 2,000,000 dinars, i.e. approximately 17,000 euros.

## POSITIVE DEVELOPMENTS

The Commissioner has continued to actively participate in expert meetings related to the enforcement of the DP Act and make public appearances to highlight the importance of data protection. The Commissioner has published its ninth publication "Protection of Personal Data: Opinions and Stances of the Commissioner" includes examples from the Commissioner's practice. It is noteworthy that the Commissioner, after opening an office outside the Commissioner's headquarters in Novi Sad in 2022, opened another office in Niš, and invested in administrative equipment for the Commissioner's work.

The Commissioner is involved in the implementation of a short study program "Training of Managers for Personal Data Protection" conducted by the Faculty of Security at the University of Belgrade, as well as the short program "Legal Protection of Data and Access to Information" conducted by the Faculty of Law at the University of Kragujevac. Furthermore, members of the Commissioner's office participate in training sessions for individuals involved in personal data protection organised by the Serbian Chamber of Commerce. Finally, Faculty of Law at the University of Belgrade has also established a new specialist study programme in the field of personal data protection, set to commence in October 2024, with the participation of members of the Commissioner's office in the implementation of specialist studies announced. The implementation of the study programmes contributes to the education and training of individuals for personal data protection within the higher education system of the Republic of Serbia.

The most significant development is the adoption of the Strategy for Personal Data Protection for the Period 2023–

2030 by the Government of the Republic of Serbia on 25 August 2023. The Strategy outlines objectives and measures to align the legal framework of the Republic of Serbia with the rules and standards of the European Union.

## REMAINING ISSUES

The capacities of the Commissioner's office have not seen significant development. Staffing and financial conditions remain at a similar level to previous years.

The relevant ministries have not yet taken steps to align the provisions of sectoral laws with the DP Act, despite the DP Act stipulating that the provisions of other laws relating to the processing of personal data must be harmonised with the DP Act by the end of 2020.

Certain specific types of personal data processing, such as video surveillance, processing of employees' personal data, and processing for the purpose of scientific and historical research and statistical purposes, are not systematically regulated.

The DP Act needs to be amended to create conditions for easier transfer of personal data outside of Serbia. Firstly, the Commissioner's authority to adopt standard contractual clauses needs to be expanded. In comparison to the EU, where standard contractual clauses for four different transfer models exist, the standard contractual clauses for the transfer of data from Serbia only apply to the transfer of data from a controller to a processor. Standard contractual clauses for other transfer models (such as from controller to controller) do not exist because the DP Act does not empower the Commissioner to adopt them. Recognising EU standard contractual clauses and binding corporate rules approved by the relevant EU bodies as adequate mechanisms for data transfer in the DP Act, in addition to the domestic ones, would further facilitate data transfer.

The Commissioner should intensify activities in issuing guidelines that will help with the implementation and interpretation of the DP Act. For instance, guidelines for implementing appropriate technical, personnel, and organisational measures to protect personal data, as well as guidelines on the controller's obligation to inform data subjects about a data breach that may pose a high risk to individuals' rights and freedoms, would be particularly beneficial for controllers and processors.

The Commissioner has not used its power to set conditions for issuing permits to certification bodies, which, according to the DP Act, would be authorised to issue certificates to controllers and processors as proof of compliance with the DP Act. In addition, neither the DP Act nor any other regulation establishes the competencies and procedures for accrediting legal entities to conduct compliance control of codes of conduct.

The Council expects the Government of the Republic of Serbia to state its position on the impact of the European Commission's Adequacy decision for the EU-US Data Privacy Framework of 10 July 2023 on companies operating in Serbia and to update the 2019 Decision on the List of Coun-

tries, Territories, or Sectors of Activities and International Organizations Where an Adequate Level of Data Protection is Considered to be Ensured.

The government has adopted a new Strategy for Personal Data Protection for the Period 2023–2030. Some of the objectives of the Strategy include addressing the aforementioned issues: amending the DP Act, harmonising sectoral laws with the DP Act, and regulating certain specific types of personal data processing. However, since the government has not adopted an action plan for implementing the Strategy nor has it formed a working body to oversee the implementation of the Strategy and the action plan, it is questionable whether the Strategy will lead to concrete results.

## FIC RECOMMENDATIONS

- Provide the Commissioner with improved working conditions, equipment, and staff to ensure the effective implementation of the DP Act.
- Harmonise the provisions of other laws related to the processing of personal data with the DP Act.
- Regulate special types of personal data processing, such as video surveillance, processing employees' personal data, and processing for scientific and historical research and statistical purposes.
- Amend the DP Act to create conditions for easier transfer of personal data outside of Serbia.
- Intensify the activities of the Commissioner in issuing guidelines to facilitate the implementation and interpretation of the DP Act, specifically guidelines on the implementation of appropriate data protection measures, and the obligation of the controller to inform individuals about data breaches.
- Prescribe conditions for issuing permits to certification bodies.
- Prescribe the competencies and procedures for accrediting legal entities to conduct compliance control of codes of conduct.
- Update the 2019 Decision on the List of Countries, Territories, or Sectors of Activities and International Organizations Where an Adequate Level of Data Protection is Considered to be Ensured, in accordance with the European Commission's Adequacy decision for the EU-US Data Privacy Framework.
- Adopt an action plan for the implementation of the Strategy for Personal Data Protection for the Period 2023–2030 and establish a working group to oversee the implementation of the Strategy and action plan.