

INFORMATION COMMISSIONER
OF THE REPUBLIC OF SLOVENIA

ANNUAL REPORT

OF THE INFORMATION COMMISSIONER
FOR THE YEAR 2020



Introduction by the Information Commissioner

In 2020, the work of the Information Commissioner of the Republic of Slovenia and also of the European Union in general was marked by the consequences of the epidemic, which has severely affected the individual's fundamental rights. Measures related to the covid-19 epidemic have posed several challenges in the area of both rights being protected by the Information Commissioner (the right of access to public information and the protection of personal data) in ways we could not have even imagined before the epidemic. Experiences in 2020 show how fragile the balance between different fundamental rights is and how easily some rights can be pushed aside completely. In situations like these, the effective protection of individual rights define the functioning of the society. All institutions must implement the Constitution of the Republic of Slovenia consistently in practice as well.

The concerns and challenges that made the individuals request the assistance of the Information Commissioner in 2020 were varied, but they all reflected the current situation in which we are in. In addition to offering direct medical help by providing health measures, countries identified personal data processing through a variety of applications and technologies as one of the fundamental tools for effective managing of the spread of the epidemic. It often seemed that this goal justified all the means used and that the data protection could take a dramatic step backward.

To that end, the Global Privacy Assembly, the European Data Protection Board, and national data protection authorities have constantly reminded the individuals and national governments that applications, measures, and other means of processing of personal data for the effective management of the epidemic must be proportionate and in line with the fundamental principles of privacy protection.

In 2020 we have seen a significant increase in the number of complaints regarding the exercise of individual rights in the field of personal data protection. At the same time, the year 2020 was also marked by considerable challenges, since Slovenia, as the only member state of the European Union still, three years after the entry of GDPR into force, has not adopted the national implementing law. This has been highlighted also in the European Parliament Resolution after two years of GDPR coming into force. Also, in November 2020, Slovenia finally adopted the Law on the protection of personal data in the field of criminal proceedings, as a way to implement The Law Enforcement Directive into the national legislation.

In the field of personal data protection, in 2020 the Information Commissioner dealt with 1018 complaints or initiatives to introduce an inspection procedure, which is the highest number of applications to date. In addition, we received 226 complaints from individuals regarding violations of their right to access data subjects' personal data, the right to access subjects' medical records, and the right to access medical records by other entitled persons. At the international sphere of work, the Information Commissioner carried out 200 cross-border cooperation procedures in accordance with Articles 60 and 61 of the GDPR, which concerned controllers carrying out cross-border processing of personal data. The Information Commissioner identified itself as the concerned supervisory authority in 104 procedures (Article 56 of the General Regulation). 22 procedures of cross-border cooperation were initiated by the Information Commissioner based on the received complaints. In addition to the above-mentioned applications, we received five reports of unauthorized communication or other unauthorized processing of patient's personal data pursuant to Article 46 of the Patients' Rights Act, and 120 notifications of personal data breaches in accordance with Article 33 of the GDPR. The complaints received and processed by the Information Commissioner during the period under review were lodged for similar reasons as in previous years such as; the transfer of personal data to unauthorized persons, the use of personal data for direct marketing purposes, video surveillance, illegal or excessive collection of personal data, the use of personal data for purposes contrary to the purpose of their collection, illegal access

to personal data files and inadequate security of personal data. When dealing with complaints and carrying out preventive inspections, the Information Commissioner found that the identified irregularities or deficiencies are still largely the result of ignorance or lack of understanding of the legislation, which can also be attributed to the fact that the new Personal Data Protection, which would more clearly define individual rules regarding the implementation of the GDPR, has not yet been adopted.

The Information Commissioner noted that the majority of controllers and processors wish to be compliant with the law, for which clear regulations and an understandable definition of the obligations are a prerequisite. This was particularly evident during the epidemic in the areas of employment and education. During the epidemic, it became clear how important clear regulations and an understandable definition of the obligations of controllers, processors, and individuals are. Serious problems, as well as individual violations, were caused by vague, unclear, or non-existent instructions, which made it impossible to implement certain measures related to the epidemic in practice. The special circumstances that marked 2020 also affected the area of compliance and prevention. Nonetheless, the Information Commissioner strengthened its activities in this area by advising 3183 individuals and legal entities in the field of personal data protection: we issued 1331 written opinions and referrals and gave 1852 advice over the phone. The Information Commissioner was also successful in applying for EU projects (such as in calls issued under the Rights, Equality and Citizenship Programme); by which it aims to further strengthen the compliance-related activities. In 2020, the Information Commissioner designed a special page on its website, on which we published opinions, positions, and recommendations related to the protection of personal data during the epidemic.

Regarding other mechanisms of the GDPR, it should be emphasized that Slovenia is the second country that has successfully prepared standard contractual clauses for the regulation of personal data processing in accordance with Article 28 of the GDPR, which was approved by the European Data Protection Board. They are available on the Information Commissioner's website.

A number of unexpected challenges and the experience that resulted from them, demonstrated, at the level of the European Union and within cooperation with the European Data Protection Board (EDPS), the importance of supervisory cooperation and the rapid implementation of cross-border procedures, while at the same time revealed many differences in national procedural rules in the EU Member States. This has also been one of the reasons for the challenges in the field of inspections, which the European Parliament also pointed out in its Resolution. However, in the Schrems II case, which overturned the European Commission's decision on the adequacy of data protection under the Privacy Shield, which allowed EU entities to transfer data from the EU to the US, the Court of Justice made it clear that high standards of personal data protection remain at the heart of the EU's attention as well as in the EU's international relations with other countries.

The world has changed irreversibly in 2020, and tremendous challenges lie ahead. Those challenges require decisive action by all competent authorities to effectively safeguard all the fundamental rights enshrined in our Constitution and for more than 70 years in the European Convention on Human Rights. We believe that there are many reasons for concern, but there is no reason for discouragement. The year 2020 has shown us that we are all connected people that know how to demand our rights.

With a good team of experts, constructive cooperation with all stakeholders, and openness to individuals and organizations, the Information Commissioner will continue to strive to secure both rights entrusted to it in the year 2021 and forward.

Mojca Prelesnik, the Information Commissioner



A brief overview of the activities in the data protection area in 2020

In 2020, due to the absence of legal regulation in the field of data protection in the Republic of Slovenia, since the new Personal Data Protection Act has still not been adopted, the Information Commissioner faced numerous problems and challenges in this field. All this led to a vast amount of open questions from both controllers and processors of personal data as well as the Information Commissioner itself.

The failure to adopt the new Personal Data Protection Act had a markedly negative impact on the conduct of minor offense procedures and the imposition of fines for established violations. Namely, due to the absence of the Personal Data Protection Act in 2020, the Information Commissioner could not impose sanctions on controllers and processors in the event of established violations of the provisions of the GDPR. The compliance of national provisions and sanctions with the GDPR is particularly important from the point of view of the harmonization of practices in the EU Member States and the point of view of cooperation with the European Data Protection Board. Fines imposed for similar offenses in similar circumstances should not differ in different Member States, especially in cases of cross-border cooperation in inspections.

The trend of an increased number of complaints, infringements of personal data protection, and complaints regarding the exercise of individual rights continued in 2020. Information Commissioner, therefore, dealt with 1018 complaints or initiatives to introduce an inspection procedure, which has been the highest number of applications to date. In addition, we received, in 2020, five cases of reports of unauthorized communication or other unauthorized processing of patient's personal data on the basis of Article 46 of the Patients' Rights Act (ZPacP), 12 appeals against the controller's decision in accordance with Article 41 Patients' Rights Act, seven appeals against the decision of the controller in accordance with Article 42 of the Patients' Rights Act, 36 complaints for violations in accordance with Article 30 of Personal data protection Act, 171 complaints of individuals for violations of the right to access personal data in accordance with Article 15 of the GDPR (of which 82 complaints were lodged due to the controller's silence), five complaints concerning infringement of the right to rectification of personal data in accordance with Article 16 of the GDPR, 11 complaints about infringements of the right to erasure of personal data in accordance with Article 17 of the GDPR and one complaint regarding Article 18 of the GDPR. All this proves that individuals are increasingly aware of their rights.

In 2020, the Information Commissioner also received 120 notifications of personal data breaches under Article 33 of the GDPR. Notifications of personal data breaches often referred to the transmission of personal data to unauthorized or wrong persons, unauthorized access to personal data due to bugs or misuse of powers vested in employees, hacker attacks against the information system with extortion viruses and data encryption, publication of personal data of parties in administrative proceedings and the loss or theft of personal data carriers (e.g. personal computers and USB sticks). The number of attacks on information systems by making data inaccessible due to malicious encryption program code and extortion viruses significantly increased, which caused significant costs and problems for controllers who had not yet implemented appropriate technical and organizational measures to ensure the security of personal data processing.

The complaints received and processed by the Information Commissioner during the period under review were lodged for similar reasons as in previous years. Many complaints in 2020 were also due to deficient information provided to individuals by controllers that collect personal data as required by Articles 12 and 13 of the GDPR. They still often fail to provide individuals with transparent, comprehensible, and easily accessible information on processing.

The previous year was also marked by an increasing number of complaints and requests for opinions regarding the protection of personal data during the epidemic (Covid-19).

The Information Commissioner therefore prepared a special page on this topic on its website. In 2020, the Information Commissioner advised 3183 individuals and legal entities in the field of personal data protection: we issued 1331 written opinions and referrals and gave 1852 advice over the phone. Regardless of the special circumstances, the Information Commissioner conducted 34 pro bono lectures for controllers and processors, most of them using online tools. We successfully implemented the iDECIDE project, financed by the European Union, aimed at raising awareness to data protection of three target populations: minors, the elderly, and the working population. The Information Commissioner also paid special attention to the data protection officers, since they are seen as the multipliers, concerned with data protection within their organizations. More than 2300 controllers and processors had appointed a data protection officer, while several hundred of them have not yet fulfilled this obligation.

The delay in the adoption of the new Personal Data Protection Act is reflected in the field of prevention and compliance, as controllers and processors consequently - until the conditions in the national legislation are clearly defined - cannot use certification under the GDPR. Among the most important achievements in 2020 in this area, it should be emphasized that Slovenia, as the second country, has successfully prepared standard contractual clauses for the regulation of contractual processing of personal data in accordance with Article 28 of the GDPR. It is a model contract that can be used by data controllers to employ the services of contract processors and had been endorsed by the European Data Protection Board.

Awareness of the importance of personal data protection and privacy in society, in the Information Commissioner's experience, has remained high among the general population despite the challenges of 2020. On the other hand, the Information Commissioner monitors the decision-making processes in the field of these two fundamental human rights with much greater concern. In 2020, the Information Commissioner issued 85 opinions on proposed amendments to regulations and noticed a worrying trend of unsystematic regulation of some serious invasions of privacy and attempts to reduce the already achieved levels of personal data protection. This was also reflected in the case of unclear or absent instructions to those liable for implementing the measures related to the epidemic. This was particularly pronounced in the field of schooling and education, as well as in work environments, which led to excessive interventions and hardships in individuals as well as in schools, companies, and other organizations. Regarding the introduction of a mobile application for contact tracking, the warnings of the Information Commissioner were mostly ignored and we estimate that due to inadequate communication, insistence on mandatory use of the application, and other ambiguities, there was a drop in confidence in such a solution. On the other hand, there are examples of good practices, such as the introduction of e-vignettes, in which the applicant obtained the views of the Information Commissioner promptly and incorporated them into the provisions of the legislation accordingly.

GDPR introduced important novelties regarding the cooperation of data protection authorities in the EU and EEC Member States (Iceland, Norway, and Liechtenstein) in cross-border cases. Among other things, it enabled and formalized the cooperation procedure according to the "one-stop-shop" principle, which stipulates that the inspection procedure in the cross-border case of personal data processing is led by the so-called leading authority while cooperating with other data protection authorities. In 2020, the Information Commissioner participated in 123 mutual assistance procedures between supervisory authorities in accordance with Article 61 of the GDPR. Based on the procedures for designating the lead and concerned supervisory authorities, the Information Commissioner actively participated in 77 cross-border cooperation procedures against companies operating across borders. 22 procedures of cross-border cooperation were initiated by the Information Commissioner, based on the received report or complaint.

The Information Commissioner, with the cooperation of the Spanish Supervisory Authority, investigated the pilot project of boarding passengers at Ljubljana Airport using biometrics, which

was carried out by the Spanish company Amadeus and found violations of the provisions of ZVOP-1 on biometrics. The cross-border cases, handled by the Information Commissioner, have not concerned only the services of popular online giants, which are largely still ongoing (the leading supervisory authority is in Ireland), but also violations of personal data by a variety of other actors from various EU Member States. Examples of controversial practices included excessive data requests for customer identification, data deletion, improper exercise of the right of access, the transmission of data to third parties. Cases often concerned breaches of personal data security, where users from Slovenia were also affected. Cooperation in cross-border cases poses a major challenge in terms of the additional resources required, both financial and human resources. Experiences from 2020 also highlighted other challenges for cooperation under Chapter 7 of the General Regulation, namely issues related to the implementation of procedures in accordance with the GDPR. The year 2020 was also marked by the implementation of the first decision of the European Data Protection Board in an Article 65 dispute, which concerned the case of Twitter. The decision of the Board is binding on the lead supervisory authority and in the concerned case the lead authority was instructed to take into account all the criteria set out in Article 83 of the GDPR to make the sanction appropriate and dissuasive.

The European Data Protection Board is taking an active approach to building uniform solutions to the challenges arising from differences in national procedural rules in the EU Member States (eg. on the individual procedural rights, deadlines for individual actions in proceedings, notification of the parties, etc.) and developing further guidelines concerning procedures under Articles 60 and 65 of the GDPR. In 2020, the Board also actively contributed to the interpretation of several provisions of the GDPR by adopting guidelines and recommendations, including the interpretations of the concepts of controller and processor, targeting users on social networks, restrictions under Article 23 of the GDPR, voice assistants and connected cars, cases of data protection infringements and on the most pressing issues of personal data processing related to the management of the Covid-19 epidemic.

In 2020, an important judgment was adopted at the EU level in the Schrems II case, declaring invalid the European Commission's decision on the adequacy of data protection under the Privacy Shield, which allowed EU entities to transfer data from the EU to the US. In response to the repealed Privacy Shield, the European Data Protection Board adopted several recommendations on appropriate complementary measures for data transfer in the US and criteria for assessing the impact of national law in the recipient country on the protection of transferred data.

2020 IN NUMBERS



48
employees



2.321.085,00
EUR budget

Data protection

Access to public information



1208
Inspection procedures



96
Minor offense procedures



1331
Issued opinions



1852
Clarifications by phone



107
Procedures of establishing
LSA and CSA



5
New guidelines



1
Form for data controllers



3
Infographics



34
Lectures



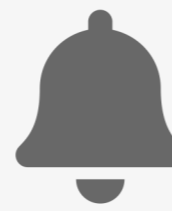
120
Data breach notifications



6
Opinions regarding DPIA



2320
Data protection officers



1
Privacy sweeps



77
One-stop-shop cooperation
procedures



123
Article 61 Mutual
assistance procedures



85
Opinions on legislative
acts



565
Complaints



328
Issued decisions



144
Notices regarding administrative
silence of the bodies



34
In camera procedures



29 days
Average time to conclude
a procedure



411
Written requests for clarifications