

4/15/2021

The Agency for Personal Data Protection for the upcoming local elections (elections of members of representative bodies of local and regional self-government units and elections of municipal mayors, mayors and prefects and their deputies) provides guidelines and recommendations to be followed by political parties, candidates and other participants. procedures and election campaigns, so that the processing of personal data of respondents or voters is in accordance with the legislative framework on data protection.

A political party, candidate or other participant in the election campaign, as the head of processing, must be guided by the principles of personal data processing, prescribed by Article 5 of the General Data Protection Regulation, which require that personal data be processed lawfully, fairly and transparently. to the respondent (principle of legality, fairness and transparency); collected for special, explicit and legitimate purposes and may not be further processed in a way that is not in accordance with those purposes (purpose limitation principle); appropriate, relevant and limited to what is necessary for the purposes for which they are processed (data reduction principle); accurate and, where appropriate, up-to-date (principle of accuracy); kept in a form that allows the identification of respondents only for as long as necessary for the purposes for which personal data are processed (storage restriction principle); and processed in a way that ensures adequate security of personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage through the application of appropriate technical or organizational measures (principle of integrity and confidentiality). Also, the processing manager is responsible for compliance with the stated principles and must be able to prove it (reliability principle).

LEGAL BASIS - obligation for any collection and processing of personal data

We emphasize that any collection and processing of personal data in accordance with the General Data Protection Regulation requires the existence of a legal basis. Therefore, in order for the processing to be lawful, at least one of the following must be fulfilled (Article 6 (1) of the General Data Protection Regulation):

- (a) the respondent has consented to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of the contract to which the respondent is a party or to take action at the request of the respondent prior to the conclusion of the contract;
- (c) processing is necessary to comply with the legal obligations of the controller;
- (d) processing is necessary in order to protect the vital interests of the respondent or another natural person;

(e) processing is necessary for the performance of a task in the public interest or in the exercise of the official authority of the controller;

(f) processing is necessary for the legitimate interests of the controller or a third party, except where those interests outweigh the interests or fundamental rights and freedoms of the respondent requiring the protection of personal data, in particular if the respondent is a child.

Data on political opinions represent a special category of personal data in terms of the provisions of the General Data Protection Regulation. The processing of such data is prohibited in principle, so their processing requires, in addition to a legal basis, one of the exceptions in Article 9 (2) of the General Data Protection Regulation, such as the explicit consent of respondents for one or more specific purposes.

PUBLICATION OF CANDIDATE PERSONAL DATA

If the legal basis for the processing of personal data is the legal obligation of the controller or the performance of a task of public interest / official authority of the controller, then that legal basis must be established in Union law or the law of the Member State to which the controller is subject. and that legal basis must also determine the purpose of the processing. For a better understanding of the above legal bases, below are the most important provisions of the law in which the collection and processing of personal data is necessary:

Pursuant to Article 21 of the Act on the Financing of Political Activities, Election Campaigns and Referendums (OG 29/19 and 98/19), political parties, independent deputies and independent councilors are obliged to submit reports on donations to the State Election Commission. on their websites. The said report contains the personal name, ie name and address, as well as the personal identification number of the donor, the date of payment of the donation, the amount of the donation paid and the type of each individual donation. Data on the address of the natural person's donor are not published.

Also, the Local Elections Act (OG 144/12, 121/16, 98/19, 42/20, 144/20) stipulates that for each of the candidates in the proposal of the candidate list, the name and surname of the candidate, residence, date must be stated. birth, OIB and gender, while nationality is stated in the candidacy for deputy mayor, mayor and prefect from the ranks of members of national minorities (Articles 18 and 19).

Articles 23 and 26 of the same Law stipulate, among other things, that data on all valid candidate lists, ie candidacies, be entered in the summary list. Competent election commissions, within 48 hours from the deadline for candidacy, publish in local

media and press, on the bulletin board and website of the unit: all validly proposed candidate lists and a summary list for the election of members of the representative body of the unit and a summary list of validly proposed candidacy for mayor, mayor and county prefect and deputy mayor and county prefect.

Article 102 of the same Act stipulates that the election commission, when determining the voting results, shall without delay publish, inter alia, the name and surname of the candidate elected municipal mayor, mayor or county prefect and deputy mayor and county prefect.

These provisions of the law are the legal basis for the collection and processing (the term processing includes, inter alia, publication) of personal data (name and surname, date of birth, OIB, residence, etc.) and respondents, in this case candidates, cannot object to the public disclosure of personal data. The General Data Protection Regulation also applies to such publicly published data, and all obligations and principles from the General Data Protection Regulation, in particular the principle of legality, transparency and purpose specification, apply to the processing or use of such data. in which they were published).

SENDING MARKETING MESSAGES TO VOTERS

Political parties and candidates contact voters and potential voters through various channels to promote themselves and their program. For the purpose of advertising and sending personalized messages to voters, as a rule, they can rely on the consent of the respondents or on a legitimate interest. For example, if a voter is a sympathizer or member of a particular political party and / or its donor, he or she can expect personalized messages, or the political party or candidate has a legitimate interest in sending such messages. In order to prove his legitimate interest, the processing manager should conduct a proportionality test, which can be downloaded [here](#).

However, the voter has the right to object to the processing of personal data at any time, ie he may object to receiving messages, regardless of whether he has given his consent or the controller has a legitimate interest. This right should be explicitly communicated to the voter and presented to him clearly and separately from all other information, which means that each marketing message should also include a notice to the respondent that he may oppose further receipt of such messages at any time. If the respondent or voter objects to receiving the messages, the processing manager may no longer send them. Also, if the respondent objects and processes for the purposes of direct marketing, personal data may no longer be processed for such purposes.

Automated decision-making, including profiling, which produces legal effects on or significantly affects the respondent, is in

principle prohibited. The creation of profiles related to the sending of targeted messages to certain respondents may affect their voting and will in principle be allowed only with the prior explicit consent of the respondents. For example, a social network can use personal information that the user posts on their profile (address, age, photos, interests, etc.), but also information about what the user indicates they like, which pages they visit, what they buy, location data and etc., in order to create a user profile based on all this data. From all this data, the social network can automatically make a decision that the user is "interested" in a political option or that he has certain political beliefs, and then such a profile can be used to send targeted messages tailored to his interests.

Social networks are becoming an increasingly important channel of communication through which political parties, candidates or other participants in the election campaign send personalized messages to voters, while sophisticated tools for predictive analytics, voter profiling techniques and targeted advertising are increasingly used.

Modern technologies enable targeted advertising based on a wide range of criteria, and they can be defined on the basis of personal data that Internet and social network users voluntarily share and publish, but also on the basis of personal data collected by social networks or third parties. In other words, sending targeted messages to voters is a complex process that may involve different stakeholders, such as data brokers, marketing analytics agencies, social media platforms and advertising networks, and is often non-transparent and poses a serious risk to privacy rights and data protection and for confidence in the integrity of the democratic process. These actors can play an important role in electoral processes, and the processing of personal data by them is subject to the supervision of the personal data protection authority.

CONCLUDING

In any case of targeted advertising, taking into account the principle of transparency, voters should be provided with appropriate information explaining why they receive a particular message, who is responsible for the message and how they can exercise their rights, including the right to complain to the Agency.

Therefore, the Agency recommends that all political parties, candidates and other participants in the election campaign address citizens / voters as much as possible in presenting their programs in ways that do not necessarily include the processing of their personal data (eg through the media, public forums, sharing non-personalized leaflets, brochures and other materials in which they present and explain their program). To send personalized brochures, letters, leaflets and other materials (including sending SMS, MMS messages or e-mails) addressed to a specific citizen / voter with his personal data, it

is necessary to take into account the existence of a legal basis from Article 6 (1) of the General Data Protection Regulation.

We also point out that in accordance with Article 34 of the Act on the Implementation of the General Regulation on Data Protection (OG 42/18), anyone who considers that his right guaranteed by the General Regulation on Data Protection and the Act on the Implementation of the General Regulation on Data Protection has been violated A request to the Agency to establish a violation of rights.