

SELF - GOVERNANCE AND NEW LEGISLATION
IN THE FIELD OF PERSONAL DATA PROTECTION

In accordance with Art. 22 par. 1 of the Constitution of the Slovak Republic „ *Letter secret, secret of transported messages and other documents and the protection of personal data are guaranteed* .”.

In the environment of the Slovak Republic at that time, the regulation of personal data protection is regulated by Act no. 122/2013 Coll. on Personal Data Protection (hereinafter referred to as “Act No. 122/2013 Coll.”) ¹ and two decrees of the Office; Decree of the Office for Personal Data Protection of the Slovak Republic no. 164/2013 Coll. on the scope and documentation of security measures ² and a decree of the Office for the Protection of Personal Data of the Slovak Republic no. 165/2013 Coll. laying down the details of the test of the natural person to perform the function of responsible person ³ . The above law and decrees are the result of the process of transposition of Directive 95/46 / EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of persons these data ⁴ .

It is logical that the 1995 Directive cannot be up-to-date in all ways how the processing of personal data is carried out in 2018. It was only a matter of time before new legislation has been adopted to move the processing and protection of personal data to the third Millennium Development Goals and at the same time unify the processing of personal data in the European Union. The result of these efforts is a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (EU) 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on free movement of such data, repealing Directive 95/46 / EC (General Regulation on Data Protection) (hereinafter the “Regulation”) ⁵ , which provides a comprehensive framework for the protection of data personal data, supplemented in each Member State by partial adjustments via national laws on personal data protection. It will be in the environment of the Slovak legal order from 25.5.2018 such Act no. 18/2018 Coll. on the protection of personal data and on amendments of certain Acts (hereinafter referred to as “Act No. 18/2018 Coll.”).

Both the regulation and Act no. 18/2018 Coll. will enter into force on 25 May 2018 and the current Act no. 122/2013 Coll. and his two decrees will become ineffective. In accordance with the above article of the Constitution of the Slovak Republic, every natural person has the right to the protection of personal data guaranteed, and of course this also applies if it processes personal data self-government in the performance of its activities, whether it is the delegated performance of state administration or the performance of its original powers.

¹ <https://www.slov.lex.sk/pravne-predpisy/SK/ZZ/2013/122/20140415>
² https://www.slov.lex.sk/static/pdf/2013/164/ZZ_2013_164_20140501.pdf
³ https://www.slov.lex.sk/static/pdf/2013/165/ZZ_2013_165_20130701.pdf
⁴ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31995l0046>
⁵ https://dataprotection.gov.sk/uouu/sites/default/files/narjad_2016_679_text_sk.pdf
⁶ https://www.slov.lex.sk/static/pdf/2018/18/ZZ_2018_18_20180525.pdf

What will this legislative change bring to local governments? How to respond to it?

First of all, it is necessary to deal with both texts, both the regulation and Act no. 18/2018 Coll. acquaint. As the Regulation does not apply to the processing of personal data under activities which do not fall within the scope of Union law, it was also necessary to legislate for activities which do not fall within the scope of Union law ⁷ , or to regulate certain areas processing for which the Regulation, as a Member State, has authorized us, which has been done by adoption Act no. 18/2018 Coll. The regulation also reflects technological progress, so it was not appropriate to was Act no. 122/2013 Coll. only amended, the current solution is more appropriate when so national legislation on the processing of personal data, as well as European legislation, is in its own right essentially identical and thus does not create disharmony in the performance of obligations for the operator.

What needs to be done?

The basic unit of territorial self-government is the municipality. The municipality in the position of the operator processes personal data, in particular on the basis of special laws, in compliance with which it performs its tasks and part of this is the processing of personal data of its employees as well as residents or others natural persons.

The legal basis on which personal data is processed is in the environment of municipalities in particular special laws where such consent is not required for such processing of personal data the person concerned (employee or resident of the municipality). Special law as a legal basis processing of personal data remains the same with the advent of Regulation or Act no. 18/2018 Coll. Also for the processing of personal data on a contractual basis, ie without consent the person concerned, if one of the parties is the person concerned (for example, an employee) nothing changed.

In the context of the transition to the new legislation, it is necessary that one of the first steps it should take The operator - the municipality / city to perform, is asking what personal data as a municipality / city I process on what legal basis (special law, contract, consent of the person concerned ...) it is this processing is "based" and whether the personal data processed are based on law or consent correspond to those that I process for the given purpose. It is also necessary if processing is based check, with the consent of the person concerned, that the consents are valid or meet the requirements of Act no. 122/2013 Coll. and if not, obtain these, if necessary. Me too necessary to confront consents under Act no. 122/2013 Coll. and the requirements for consents under Act no. 18/2018 Coll. and regulations to ensure that those obtained now comply with current law and were applicable, also applicable to the new legislation ⁸ . In case the municipality intends to acquire consents only from 25.5.2018 it is necessary to "set" them according to the new regulation. The result of this activities should be a transparency of the flow of personal data at the operator, municipality / city, and the liquidation of those personal data on the processing of which the municipality has no legal basis. The result of this activity will be a clear structure of what personal data the municipality / city as the operator processes and on what legal basis the processing is based.

⁷ For example, resolving complaints under Act no. 9/2010 Coll. on complaints or arrangements for economic mobilization.
⁸ See § 110 par. 11 of Act no. 18/2018 Coll.

Another important aspect is the supervision of how personal data is set up in a community / city environment the operator process, ie management and knowledge of how the municipality obtains personal data, who comes into contact with them within the municipality (in the environment of a municipal or city office), such as processes them (for example, whether the letter of the law is observed, if it also stipulates the method of processing). You need to know who has what access rights, such as personal data separated by appearance for their purpose and in the context of the job classification or job description and instructions employees. It is not right if the employees of the municipality or city have access to personal data for which it does not follow them on the basis of the job description. They should only perform those processing operations with personal data of which they have been instructed. If this is not the case, this authorization and access control structure needs to be set up correctly, thus eliminating it the possibility of security breaches and unauthorized access to personal data. In context Act no. 122/2013 Coll. processing of personal data by the operator, municipality or city, performed by instructed authorized persons. In the context of the regulation, this will be similar after the content on the formal side of the instruction, replace the operator's credentials with instructions, describing how the person having access and authorization to the personal data has the personal data process. ⁹

Everyone has the right to know who processes their personal data and why information on who the operator is, why he has an obligation or may have his personal data to process them from where they are not provided to him by the person concerned himself. In the current legal regulation, this information obligation was regulated by § 15 par. 1 to 3 of Act no. 122/2013 Coll. whereas the basic and well-known exception was that if the operator, the municipality / city, whoever processed it personal data on the basis of the law, to fulfill this information obligation towards the person concerned did not have to (Section 15, Paragraph 3 of Act No. 122/2013 Coll.). Regulation and Act no. 18/2018 Coll. in order transparency and information of the data subject abolish this exemption from the information obligation, therefore, even if any operator, including a municipality / city, will process personal data on under the law (on an employee, on a local taxpayer ... or on another person) will be obligatory inform the person concerned. It is necessary to prepare for this change and to implement and process it "Privacy policy" in order to put the municipality / city in a position the operator fulfilled these obligations and was able to prove their fulfillment. ¹⁰

Another novelty, which will not be so "dramatic" in the environment of municipalities, is the obligation of the municipality to have designated responsible person ¹¹ , this means that even municipalities that do not currently have a responsible person they must identify it and communicate its contact details to the Office. It is possible if the municipalities recognize it for an appropriate solution that will be enforceable in terms of the responsibilities of the responsible person to several municipalities have jointly designated one responsible person. The possibility of that remained unchanged the responsible person can be both the employee of the operator (employee of the municipality), as well as external person. ¹²

⁹ Compare § 21 of Act no. 122/2013 Coll. and Art. 32 par. 4 of the Regulation
¹⁰ Compare § 15 par. 1 to 3 of Act no. 122/2013 Coll. and Art. 13 and 14 of the Regulation.
¹¹ See guideline WP29 / Working Group according to Art. 29 to the responsible person: https://dataprotection.gov.sk/uouu/sites/default/files/usmernenia_rykajnice_sa_zodpovednych_osob.pdf.
¹² Compare § 23 to § 27 of Act no. 122/2013 Coll. and Art. 37 to 39 of the Regulation.

Regarding the issue of declaring security and protection of personal data in the environment specific operator (municipality / city), Act no. 122/2013 Coll. demanded a declaration security by documenting in the form of a security project only if the operator complied with Act no. 122/2013 Coll. stated criteria. Regulation and Act no. 18/2018 Coll. they approach security in terms of its provision in the same way, only from a formal point of view abandons the strict formalized approach that followed for the operator in the case of if he had to draw up a security project, the details of which were set out in detail in decree. Regulation or law no. 18/2018 Coll. they are no longer so strict with documents describing the security measures taken formally, and it is up to the operator to how to deal with a formal description of the security measures taken by him, but which is always obliged to prove at the request of the Office, as such an obligation is stipulated by a regulation also Act no. 18/2018 Coll. ¹³

Regulation and Act no. 18/2018 Coll. they understand the processing of personal data more in line description of general standards for the processing of personal data and no longer how the processing of personal data is carried out, therefore, for example, it is not in both texts individually specified adjustment of personal data processing by camera systems, such as this was the case in Act no. 122/2013 Coll. It will therefore be necessary for operators to do these processing operations were re-evaluated and they found the legal basis for monitoring most often in the legitimate interest or in the public interest, or carry out monitoring, if any provides for a special law on the basis of this special law.

The above are just the basic features of some of the "processing" habits personal data from 25.5.2018 will need to be seen as an opportunity to start processing of personal data "again" and use this option for "major cleaning" personal data. Of course, this change requires detailed work and preparation to be done the Office will do much to facilitate its guidance and disclosure on its website ¹⁴ .

¹³ Compare § 19 of Act no. 122/2013 Coll. and Art. 32 of the Regulation.
¹⁴ Website of the Office, information on the regulation: https://dataprotection.gov.sk/uouu/sk/main-content/narjad_pdr.