



# **Analysis of Data Protection Regulations and Institutional Framework in Bosnia and Herzegovina**

*Overview of Current Solutions and Comparison with the  
European Union General Data Protection Regulation*

**Sarajevo, 2024**



Analysis of Data Protection Regulations and  
Institutional Framework in  
Bosnia and Herzegovina – Overview of Current  
Solutions and Comparison with the European Union  
General Data Protection Regulation

Nasir Muftić

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Regulation

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# EXECUTIVE SUMMARY

## 1

The General Data Protection Regulation (GDPR) is a legally binding instrument of the European Union (EU) that replaced the Data Protection Directive (the Directive). The Law on the Protection of Personal Data in Bosnia and Herzegovina (the Law) is not harmonised with the GDPR since the legislator followed the Directive when enacting the law. Certain segments thereon are harmonised because the GDPR retained several provisions of the Directive.

## 2

Personal Data Protection Agency (the Agency) is the institution responsible for the implementation of the Law. In addition to the Agency, the Court of BiH also participates in this procedure, providing judicial oversight over the implementation of the Law. Persons who believe that their rights have been violated can also rely on the Constitutional Court of BiH, which has appellate jurisdiction and can assess whether the decisions of state bodies violate the rights of natural and legal persons guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore, relevant actors are also the BiH Ministry of Civil Affairs, the Parliamentary Assembly of BiH, the BiH Council of Ministers and the BiH Ombudsmen Institution.

## 3

According to available data, the Agency operates with almost twice less staff than envisaged and with financial resources that do not meet its needs, such as for office premises or travel expenses required for inspection and employee training.<sup>1</sup> Of the current 27 employees, only 7 of them work administrative acts, i.e., only 7 perform the Agency's core activities.

<sup>1</sup> The Agency, 2022 Report on the protection of personal data in Bosnia and Herzegovina for the year 2022, available at (in BCS): [http://azlp.ba/publikacije/Archive.aspx?langTag=bs-BA&template\\_id=149&pageIndex=1](http://azlp.ba/publikacije/Archive.aspx?langTag=bs-BA&template_id=149&pageIndex=1)



# 4

There have been several incidents in BiH in the past years related to breaches of obligations envisaged by the Law, as well as several incidents that revealed the insufficient independence of the Agency in its activities. Furthermore, there have been incidents indicating the impossibility of providing legal protection to persons in BiH due to the inadequate legal framework. The agency has repeatedly called on the authorities to adopt a new law harmonised with the GDPR and thus increase the level of protection. In addition, BiH is facing difficulties in other matters because it lacks an appropriate legal framework for personal data protection. The lack of a legal framework is an obstacle in the implementation of the international cooperation programme in criminal justice with Eurojust, as well as in European Commission's decision on BiH's compliance with the GDPR, confirming that the domestic legal framework provides security in terms of the level of personal data protection.

# 6

There are several inconsistencies between the Law and the GDPR. These refer to:

- general requirements for processing of personal data
- data protection officer
- representatives of foreign entities
- special categories of personal data
- rights of data subjects
- registration and records of processing activities
- data transfer
- sanctions for infringements

# 5

Laws modelled on the GDPR have been adopted by the Western Balkans countries, as well as countries around the world. Furthermore, many operators in BiH doing business with the EU already apply the GDPR. There is no interest whatsoever for BiH or its citizens to not enact a GDPR-based law based.

# 7

The proposal of the Personal Data Protection Law (the Proposal) was drafted by the Agency in 2019. The text of the Proposal, which was available at the time of writing this paper, is largely compliant with the GDPR. According to available information, the process of drafting the final text of the Proposal is led by an interministerial group headed by the Ministry of Civil Affairs. Its development is still underway; therefore, modifications are possible.

# **1. BiH's International Obligations and the Current Legal Framework for Personal Data Protection**



On 16 June 2008, BiH concluded the Stabilisation and Association Agreement, assuming an international legal obligation to harmonise its law with the EU *acquis*. This includes the transposition of the GDPR into the BiH legal system. In addition to the GDPR, BiH has other obligations under international law that require the adaptation of the national legal system.<sup>2</sup> With respect to obligations to protect privacy and personal data, the most prominent are the Council of Europe Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data and the Additional Protocol and Protocol 223 (Protocol amending the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data).<sup>3</sup> BiH has ratified these international treaties. The four criminal codes in the country envisage the criminal offense of unauthorised use of personal data.<sup>4</sup>

The key regulation governing personal data protection in BiH is the Law on the Protection of Personal Data.<sup>5</sup> This 2006 Law was modelled after EU Directive 95/46/EC.<sup>6</sup> The Directive preceded the GDPR and is no longer in force, therefore, the Law that follows it is not in compliance with the GDPR. The Entities and Brčko District do not have their own comprehensive regulations on the protection of personal data – the competence thereon lies at the state level. The Law was amended several times – once in 2006<sup>7</sup> and twice in 2011.<sup>8</sup> To implement a law, regular drafting and adoption of by-laws is foreseen. A series of by-laws were adopted on the basis of the Law.<sup>9</sup>

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<sup>2</sup> *The Agency, List of binding sources of international law is available at:*  
[http://www.azlp.ba/propisi/Default.aspx?id=5&langTag=bs-BA&template\\_id=149&pageIndex=1](http://www.azlp.ba/propisi/Default.aspx?id=5&langTag=bs-BA&template_id=149&pageIndex=1)

<sup>3</sup> Available at: [http://azlp.ba/aktuelnosti/Default.aspx?id=289&langTag=bs-BA&template\\_id=149&pageIndex=1](http://azlp.ba/aktuelnosti/Default.aspx?id=289&langTag=bs-BA&template_id=149&pageIndex=1)

<sup>4</sup> Available at: <https://archive.europa.ba/wp-content/uploads/2019/06/Analiti%C4%8Dki-izvje%C5%A1taj-Mi%C5%A1ljenje-Komisije-o-zahtjevu-Bosne-i-Hercegovine-za-%C4%BDlanstvo-u-Evropskoj-uniji.pdf>

<sup>5</sup> *The Agency, List of binding sources of international law is available at:*  
[http://www.azlp.ba/propisi/Default.aspx?id=5&langTag=bs-BA&template\\_id=149&pageIndex=1](http://www.azlp.ba/propisi/Default.aspx?id=5&langTag=bs-BA&template_id=149&pageIndex=1)

<sup>6</sup> *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 such data OJ L 281, 23.11.1995, p. 31-50 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)*

<sup>7</sup> *Official Gazette of BiH, 49/2006.*

<sup>8</sup> *Official Gazette of BiH, 76/2011 and 89/2011.*

<sup>9</sup> Available at: [http://www.azlp.ba/propisi/Default.aspx?id=5&langTag=bs-BA&template\\_id=149&pageIndex=1](http://www.azlp.ba/propisi/Default.aspx?id=5&langTag=bs-BA&template_id=149&pageIndex=1)

## **2. Institutional Framework for the Implementation of the Personal Data Protection Law**



## 2.1. Personal Data Protection Agency

The law reads that the Personal Data Protection Agency is a public institution responsible for data protection. The Agency is an autonomous administrative organisation established for the purpose of ensuring the protection of personal data. The Agency is managed by a director who reports to the Parliamentary Assembly of BiH about the work of the Agency. Financial resources for its work are provided by the state budget in accordance with the Budget Law and the laws governing public administration and the position of civil servants. Specific information budget spending (e.g., employee salaries, travel expenses, office equipment and material costs, etc.) and the exact amounts of these expenses are presented in the annual budget expenditure report available on the Agency's website.<sup>10</sup> The Agency submits the report to the Parliamentary Assembly of BiH annually.<sup>11</sup> The competences of the Agency are more closely specified by the Law and include supervising the implementation of the Law, handling data subjects' complaints, adopting by-laws, opinions and other acts, etc.

### ***2.1.1. Agency's Director, Organisation, Work Plan and Budget***

The Agency is headed by a director, appointed along with a deputy director by the Parliamentary Assembly of BiH for a term of five years, with the possibility of re-appointment. The director manages the work of the Agency, represents it, prepares the work plan and the annual budget and proposes them to the BiH Council of Ministers.

According to the Agency's 2023 Budget Execution Report,<sup>12</sup> the 2023 budget was BAM 1,483,544 – amounting to 95.43% of the approved budget. In that year, the Agency had 26 employees, and the approved budget envisaged 27. In a telephone conversation with an Agency's official, we were informed that out of 26 employees, only 7 are engaged in the drafting of administrative acts, i.e., only 7 work directly on the implementation of the Law – the core activity of the Agency. The Rulebook on Internal Organisation and Systematisation of September 2023<sup>13</sup> foresees staff of 45, of which the Division for Inspection, Complaints and the Central Registry should have 20 employees, the

<sup>10</sup> Available at: <http://azlp.ba/publikacije/Archive.aspx?pageIndex=2&langTag=hr-HR>

<sup>11</sup> *Ibid.*

<sup>12</sup> Available at: <http://www.azlp.ba/publikacije/default.aspx?id=4199&langTag=bs-BA>

<sup>13</sup> Available at: [http://azlp.ba/o\\_agenciji/organizaciona\\_struktura/default.aspx?id=3904&langTag=bs-BA](http://azlp.ba/o_agenciji/organizaciona_struktura/default.aspx?id=3904&langTag=bs-BA)

Division for International Cooperation and Public Relations 8 employees, the Administrative Division 11 employees, and the Director's Cabinet (in addition to the director and deputy director) 4 employees. However, the 2023 Budget Law failed to follow these norms.<sup>14</sup> One can conclude from this document that the Agency's organisational capacities and human resources are insufficient, since the number of employees does not correspond to the number required by the projection. Furthermore, the Agency's 2023 Budget Execution Report does not indicate how many employees work in the department for supervisory activities or how many of them have professional IT training.<sup>15</sup> Therefore, the Agency staffing is at 60% of the envisaged and required number by the systematisation of positions, and it claims to have requested an increase in staff number.<sup>16</sup> It seems that the number of current employees is insufficient. Furthermore, the Agency stated in its Operational Plan for Budget Execution that the funds approved for travel expenses, which cover activities pertaining to inspections, employee training, etc., are insufficient.<sup>17</sup> The Agency's 2022 Annual Report<sup>18</sup> states that the Agency has three official vehicles – a number that does not meet its needs. This situation raises questions about the performance of the Agency's core activity, considering that it is obliged to carry out inspection. Furthermore, the Agency was granted 11 offices and one archive room, with a total area of 308.69 m<sup>2</sup>. As they state, "due to inappropriate and insufficient space, the Agency operates in difficult conditions".<sup>19</sup> Finally, the Agency's capacity is also limited because of many employee sick-leave absences. In 2022, the number of sick-leave days was 439.<sup>20</sup> Due to the above, one can conclude that the number of employees and funds available to the Agency do not allow it to perform all the activities and tasks that it is tasked with.

The Agency recognises the need to amend the existing regulations and adopt a new Law harmonised with the GDPR; we see this intention reflected in the documents published by the Agency, as well as in the content published on their official website.<sup>21</sup>

<sup>14</sup> *Law on the Budget of the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina for 2023, Official Gazette of BiH, 22/23.*

<sup>15</sup> *The data were requested in accordance with the Law on Freedom of Access to Information from the Agency and the BiH Ministry of Civil Affairs, however, we have not received any answer until the finalisation of this paper.*

<sup>16</sup> *2024-2026 Medium-term Work Plan of the Personal Data Protection Agency in BiH.*

<sup>17</sup> *2023 Operational Plan for Budget Execution of the Personal Data Protection Agency, available at: <http://www.azlp.ba/publikacije/default.aspx?id=3767&langTag=bs-BA>*

<sup>18</sup> *Available at: [http://azlp.ba/publikacije/Archive.aspx?langTag=bs-BA&template\\_id=149&pageIndex=1](http://azlp.ba/publikacije/Archive.aspx?langTag=bs-BA&template_id=149&pageIndex=1)*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *2024-2026 Medium-term Work Plan of the Personal Data Protection Agency in BiH, available at: [http://azlp.ba/publikacije/Archive.aspx?langTag=bs-BA&template\\_id=149&pageIndex=1](http://azlp.ba/publikacije/Archive.aspx?langTag=bs-BA&template_id=149&pageIndex=1)*

### **2.1.2. Competences**

The agency has several competences that can be classified into three groups:<sup>22</sup>

**(1)** Competences related to the capacity to act as an institution responsible for handling complaints filed by persons who believe that their rights guaranteed by the Law have been violated. In this case, the Agency passes a legally binding decision according to the rules of administrative procedure and may order the controller or processor to remedy the situation they caused, to correct or supplement personal data or to block or destroy them.

**(2)** Powers related to supervision over the implementation of the Law. The Agency has the right to, inter alia, issue decisions ordering corrective measures to data controllers and processors. It may order termination of illegal processing of personal data or impose other measures (e.g., to eliminate the identified deficiencies within 15 days or to provide the data necessary for the Agency's decision). Furthermore, the Agency can impose fines. The Agency acts through the work of inspectors. An administrative dispute can be initiated against the Agency's decision before the Court of BiH.

**(3)** Powers related to monitoring the conditions for the protection of personal data and making proposals to amend the existing legal framework, promoting and raising awareness and training in this area. The agency is competent to present proposals for the adoption or amendment of laws pertaining to personal data processing, and to issue opinions on the proposals of those laws. In addition, it provides an assessment of BiH's actions with regard to its obligations of personal data protection arising from international agreements to which BiH is a contracting party and which are binding.

<sup>22</sup> The Law specifies the competences of the Agency, stipulating that it shall have powers to:

- a) Perform supervision, through inspection, over fulfilment of obligations stipulated by this Law;
- b) Keep the Central Registry;
- c) Accept incentives and complaints of citizens concerning breaches of this Law;
- d) Adopt implementing regulations, guidelines or other legal documents in line with the Law;
- e) Order blocking, erasing or destroying of data, temporarily or permanent ban of processing, issue warning or reprimand to the controller;
- f) File a request for filing the misdemeanour proceedings pursuant to this Law;
- g) Provide advice and opinions in the area of personal data protection;
- h) Cooperate with similar authorities in other countries;
- i) Exercise other duties as foreseen by law;
- j) Supervise the transfer of the personal data out from Bosnia and Herzegovina;
- k) Impose a penalty in the misdemeanour procedure, in accordance with this Law.

The proposal of the new Law enables the Agency to charge a fee for providing opinions, trainings or other services to business entities when they request them for the purpose of performing their regular activities (Art. 100 (7)). It seems that the goal of this provision is to enable the Agency to charge fees to those business entities that, as part of their regular business, charge for legal and consulting services of interpreting the law. In other words, the goal of the provision is not to collect fees from all business entities, which arises from the current draft of the provision. The following amendment to the above paragraph is proposed: "The Agency shall charge a fee for providing opinions, trainings and other services that it provides to economic operators (such as law firms, consultants, etc.) when they request them for the purpose of performing their regular activities or of providing services to other business entities".

### ***2.1.3. Agency's Autonomy and Independence***

In accordance with the Civil Service Law of BiH, the director (or other civil servants) may not perform a function, activity or be in a position that leads to a conflict of interest with their official duties, which means, inter alia, that they cannot serve as members of administrative and other committees of political parties and may not follow instructions of political parties or perform any additional activity for which a compensation is paid, except when such an activity is approved by the minister. Furthermore, persons on these functions are required to refrain from publicly expressing their political beliefs. In addition to the director and the director's cabinet, the organisational units of the Agency are the Division for Inspection, Complaints and the Central Registry, the Division for International Cooperation and Public Relations, and the Administrative Division. Civil servants employed in the Agency receive a salary in accordance with the Civil Servants Law of BiH, which also stipulates that they must hold a university degree.

As stated earlier, the Agency's ability to act independently is limited due to insufficient human, financial and technical capacities.<sup>23</sup> In 2022, the Agency conducted 95 proceedings *ex officio* (84 in 2021). It received 206 complaints, carried out 75 inspections and issued 14 misdemeanour orders (183, 79 and 9 respectively in 2021). In 2022, 15 administrative procedures were conducted against the Agency's

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<sup>23</sup> See: <https://banjaluka.net/novi-zakon-stopiran-osporava-se-nezavisnost-agencije-za-zastitu-licnih-podataka-bih/>



decisions, while in 2021, that number was 19.<sup>24</sup> In its 2022 annual report, the Agency stated that they were not able to resolve all cases due to lack of capacity, and that parties, i.e. complainants, addressed the Administrative Inspection of the BiH Ministry of Justice on the ground of non-compliance with the deadlines. In this year, 206 complaints were received, and 104 procedures were completed, while 102 complaints remain unresolved.<sup>25</sup> As Samira Čampara, Assistant Director in the Division for Inspection, Complaints and the Central Registry, points out, in the past year the Agency initiated 100 procedures ex officio but did not solve them because it does not have sufficient capacity.<sup>26</sup> The number of complaints that citizens submit to the Agency is increasing – in 2023 it was higher by 30% compared to the number of complaints in the previous year, whereas compared to three years ago, the increase is 100%. Apart from being understaffed and lacking material resources, there have been other problems that indicate a lack of independence of this institution, as the European Commission points out in its report. The Commission underlines that “no steps were taken to increase the independence and the human and financial resources of the Personal Data Protection Agency”.<sup>27</sup> The Agency needs to make a better balance between the protection of privacy and the general public interest, especially media freedom, electoral integrity and the fight against corruption. Exemptions are used by public institutions to avoid disclosing documents. While the Parliamentary Assembly must consult the Agency on legislative proposals, other legislative assemblies are still not obliged to do so.<sup>28</sup>

#### **2.1.4. Key Decisions of the Agency and Incidents**

Since its establishment, the Agency has made several important decisions that have influenced the interpretation of the Law. There are two forms of acts that the Agency passes: opinions and decisions. Opinions are acts that have an advisory character and resolve certain disputed matters that arise in practice. Decisions are binding passed made by the Agency following a complaint of the data subject claiming that the controller or data processor has violated their right or that there exists a direct risk of violation of the right.

<sup>24</sup> Available at: [https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-58a2d9b9945a\\_en?filename=SWD\\_2023\\_691%20Bosnia%20and%20Herzegovina%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-58a2d9b9945a_en?filename=SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf), 40.

<sup>25</sup> 2022 Report on Personal Data Protection, available at:

[http://azlp.ba/publikacije/Archive.aspx?langTag=bs-BA&template\\_id=149&pageIndex=1](http://azlp.ba/publikacije/Archive.aspx?langTag=bs-BA&template_id=149&pageIndex=1)

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, 24.

<sup>28</sup> *Ibid.*, 24.

### Selected opinions:

- **Opinion** 03-04-04-6746/21 of 3 March 2021 by which the Agency expresses its opinion that the Law does not allow the establishment and management of the Register of Civil Servants of the Federation of BiH due to the absence of an explicit legal basis thereon.<sup>29</sup>
- **Opinion** (“Your e-mail dated 13 December 2020” of 29 December 2020) by which the Agency expresses its opinion that the Law does not allow the recording of police officers in the performance of official actions in a public place for the sole reason of them being public servants, but only if it is evident that their actions indicate abuse of authority, unprofessional behaviour or any form of unlawful conduct or for another reason recognised by the Law.<sup>30</sup>
- **Opinion** 03-50-13-25-59,2/19 of 21 January 2019 by which the Agency decides on the legality of verifying diplomas of civil servants and employees in the institutions of BiH.<sup>31</sup> The decision establishes that the Collegium of the Secretariat of the PA BiH cannot check diplomas of civil servants and state employees, as such an action violates their rights under the Law.
- **Opinion** 03-1-02-1-314-2/19 BA of 25 March 2019 by which the Agency decides on the legality of submitting data on persons employed in the public sector in Sarajevo Canton for the purposes of the Register of Public Sector Employees.<sup>32</sup> The opinion served the Government of Sarajevo Canton to make personal data of employees in the public sector in Sarajevo Canton available on a publicly accessible website.

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<sup>29</sup> Available at: [https://mpu.ks.gov.ba/sites/mpu.ks.gov.ba/files/2023-10/misljenje\\_azpl\\_-\\_registar\\_drz\\_sluzbenika\\_fbih.pdf](https://mpu.ks.gov.ba/sites/mpu.ks.gov.ba/files/2023-10/misljenje_azpl_-_registar_drz_sluzbenika_fbih.pdf)

<sup>30</sup> <https://www.cazin.net/magazin/smije-li-se-snimati-policaјce>

<sup>31</sup> Dostupno na: <https://balkans.aljazeera.net/news/balkan/2019/2/7/bih-agencija-za-zastitu-licnih-podataka-zabranila-provjeru-diploma>

<sup>32</sup> Available at: <https://balkans.aljazeera.net/news/balkan/2019/2/7/bih-agencija-za-zastitu-licnih-podataka-zabranila-provjeru-diploma>

### Selected decisions:

- **Decision** of 8 October 2020 prohibiting the BiH Central Election Commission to publish on the official website [www.izbori.ba](http://www.izbori.ba) the personal data of registered voters, entered in the extract from the Central Voters' List to vote outside of BiH.<sup>33</sup>
- **Decision** of 5 March 2019 prohibiting the High Judicial and Prosecutorial Council of BiH from processing the personal data of judges and prosecutors in the manner established by the Rulebook on Submission, Verification and Processing of Financial Statements of Judges and Prosecutors.<sup>34</sup> In the court case against this decision, the Court of BiH confirmed that there is no legal ground for the processing of personal data in the manner and for the purpose provided by the Rulebook.

In addition to the aforementioned opinions and decisions, the Agency also issued a statement on 23 March 2020, during the COVID-19 pandemic,<sup>35</sup> which attracted public attention. The agency expressed its opinion that it is not unlawful to publish a minimum amount of information about persons who violate laws, or certain prohibitions imposed by competent authorities. This statement by the Agency followed *ex post facto*, i.e. after certain administrative levels in Bosnia and Herzegovina (Canton 10, Konjic, Trebinje and Čelić) published lists containing personal data of persons who violate the isolation rules and lists of infected persons. Soon, other administrative levels also started publishing lists containing personal data.<sup>36</sup> Only on 10 April 2020, at a time when all the lists in BiH were already posted online, the Agency released its opinion that the publication of personal data of persons who violate mandatory self-isolation is unlawful, claiming that such a measure is not prescribed by law and that, in general, indiscriminate and proactive publication of personal data causes risks for the rights of individuals.<sup>37 38</sup>

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<sup>33</sup> Available at: <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/cik-ovim-potezom-dirnuo-u-osinje-kriminalno-politicko-gnijezdo/392616>

<sup>34</sup> Available at: <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/sud-bih-odbio-tuzbu-vstv-a-zbog-licnih-podataka-sudija-i-tuzilaca/364362>

<sup>35</sup> Available at: <http://www.azlp.ba/saopstenja/?id=2914>

<sup>36</sup> Available at: <https://depo.ba/clanak/200881/imaju-li-javni-organi-pravo-da-na-službenim-stranicama-objavljuju-licne-podatke-lica-zarazenih-korona-virusom>

<sup>37</sup> Available at: <http://www.azlp.ba/saopstenja/?id=2936>

<sup>38</sup> Available at: <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/agencija-za-zastitu-licnih-podataka-bih-zabranjuje-se-objavljivanje-podataka/371472>

These decisions and releases address some of the most significant incidents of violations of the right to protect personal data in BiH. In addition to the above, there are also incidents that have gained the attention of the public, such as the publication of private phone numbers and addresses of about 10,000 citizens of BiH in an international web directory.<sup>39</sup> In addition, there has been criticism of the Agency's work resulting from the lack of independence and human and financial resources also in, inter alia, the European Commission report.<sup>40</sup>

## 2.2. Court of BiH

The Court of BiH is the competent judicial authority for the protection of personal data. As part of its jurisdiction to assess the legality of individual and general executive administrative acts, this court decides in administrative disputes initiated against the Agency's decision based on a filed complaint and thus supervises the work of the Agency, as it also does in cases of administrative silence.

### Selected judgments:

- **Judgment no. S1 3 U 041148 22** U of 7 February 2023 confirming the decision of the Agency, which established the unlawfulness of the verification of diplomas of employees in the public sector by the Sarajevo Canton's Anti-Corruption and Quality Control Office and the Sarajevo Canton Fund for Housing Construction, without suspicion that any individual diploma was forged.
- **Judgment no. S1 3 U 038648 20** January 2023 confirming the decision of the Agency by which the Central Election Commission of Bosnia and Herzegovina was prohibited from publishing the data of registered voters on its official website.
- **Judgment no. S1 3 U 032369 19** U of 13 January 2020 confirming the Agency's decision prohibiting the processing of personal data of judges and prosecutors in the manner foreseen by the regulation adopted by the High Judicial and Prosecutorial Council of BiH.

<sup>39</sup> Available at: <https://detektor.ba/2024/05/17/hiljade-adresa-i-brojeva-gradjana-objavljeno-na-internet-imeniku-ali-bih-nema-nacina-da-ih-zastiti/>

<sup>40</sup> See footnote 24.

- **Judgment no. S1 3 U 020510 16 U** of 2 March 2017 confirming the decision of the Agency by which the company MTEL d.d. Banja Luka was ordered to block, delete and destroy unique identification numbers of users of its services.

### **2.3. Constitutional Court of BiH**

The Constitutional Court has appellate jurisdiction in matters of the Constitution of BiH, when they become the subject of a dispute due to a judgment of any court in Bosnia and Herzegovina. The Constitution of BiH recognises the rights envisaged by the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, inter alia, include the right under Article 8 of this Convention – the right to respect for private and family life, home and correspondence. This means that persons who believe that their rights guaranteed by the Constitution of BiH have been violated by a judgment of the Court of BiH can appeal to the Constitutional Court of BiH.

### **2.4. Ombudsmen of BiH**

The decisions of the Ombudsmen Institution have the nature of authoritative, but legally non-binding recommendations for authorities in BiH. This institution gave its opinion on important issues of the application of the Law, such as the issue of verifying diplomas of civil servants and state employees and the publication of the Register of Employees in the Public Sector in the Sarajevo Canton.<sup>41</sup> In addition to this competence, the BiH Ombudsmen can also initiate administrative proceedings to exercise the rights and freedoms of citizens guaranteed by the Constitution of Bosnia and Herzegovina, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and can instruct to a legal remedy. Furthermore, this institution is responsible for initiating administrative disputes and intervening in the pending ones, as well as submitting requests to repeat the procedure and requests for review of court decisions. The annual reports of the Ombudsmen Institution indicate that this institution issued recommendations pertaining to reporting of a possible suicide, underlining that the right to life and health has priority over the right to personal data protection.<sup>42</sup> Furthermore, as for public

<sup>41</sup> Available at:

[https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2020121715362648bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2020121715362648bos.pdf)

<sup>42</sup> 2023 Annual Report of the Ombudsmen Institution, available at:

[https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2024040915403579bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2024040915403579bos.pdf)

insight into salaries of elected and appointed persons and civil servants, the Ombudsmen Institution assessed that the right to personal data protection does not constitute an obstacle for providing this information, and they stated that their recommendation was not implemented.<sup>43</sup> In their annual reports, this institution repeatedly states that it has issued recommendations related to the processing of personal data by authorities and public companies, frequently noting that they have not been implemented.

## **2.5. Parliamentary Assembly of BiH and Council of Ministers of BiH**

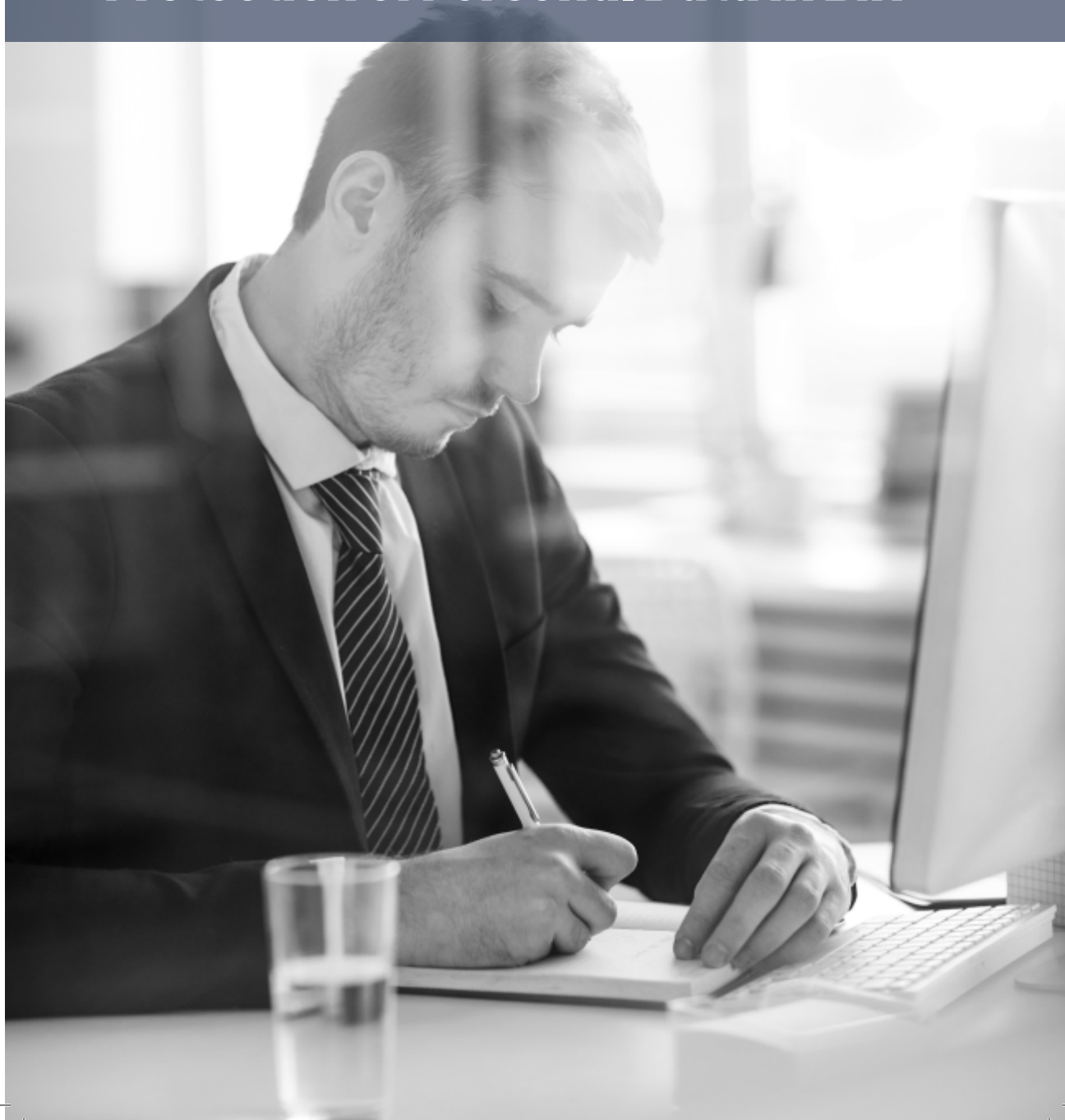
The Parliamentary Assembly of BiH and the Council of Ministers of BiH control the work of the Agency. The Director of the Agency prepares and proposes for adoption to the Council of Ministers the annual work plan of the Agency, as well as the annual budget. The Parliamentary Assembly of BiH is involved in the procedure, as it gives a subsequent final confirmation. In addition, as already stated, the Parliamentary Assembly of BiH appoints the director and deputy director. Also, the Council of Ministers approves the Rulebook on the internal organisation of the Agency, which is adopted by the Director of the Agency, and adopts the regulations necessary for the implementation of the Law, as well as by-laws related to data security, representatives of the controller not having its seat on the territory of BiH, data collections, the Central Registry and record keeping.

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<sup>43</sup> 2022 Annual Report of the Ombudsmen Institution, available at: [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2023042110381041bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2023042110381041bos.pdf)



### **3. Assessment of the Existing Framework for Personal Data Protection and the New Law on the Protection of Personal Data in BiH**





There is an overall consensus that it is necessary to pass a new law that will be harmonised with the GDPR. The Agency has been repeatedly stating that in the time of new technologies and developments all over the world, the adoption of a new law is necessary in Bosnia and Herzegovina.<sup>44</sup> The absence of such a law means that the citizens of BiH have “a lower level of legal protection, or that some of the rights existing in the EU are not prescribed by law, or that they do not have an independent supervisory authority to which they can turn”.<sup>45</sup> As underlined above, the current legal and institutional framework does not even ensure that the existing Law, which is inconsistent with the GDPR, is fully implemented. As Samira Čampara, Assistant Director in the Division for Inspection, Complaints and the Central Registry, points out, in the past year the Agency initiated 100 procedures *ex officio* but did not solve them because it does not have enough capacity.<sup>46</sup> The number of complaints that citizens submit to the Agency is increasing – in 2023 it was higher by 30% compared to the number of complaints in the previous year, whereas compared to three years ago, the increase is 100%. Apart from being understaffed and lacking material resources, there are other problems that indicate the lack of independence of this institution in the past, as the European Commission points out in its report.<sup>47</sup> The lack of a legal framework is also an obstacle in the implementation of the international cooperation programme in criminal justice with Eurojust,<sup>48</sup> as well as in European Commission's decision on BiH's compliance with the GDPR, confirming that the domestic legal framework provides security in terms of the level of personal data protection.<sup>49</sup> The lack of an adequacy decision<sup>49</sup> makes it difficult for business entities in BiH to do business with foreign business entities, especially those in the EU. In addition, the adoption of a new law that will be harmonised with the GDPR will not mean that the existing problems in the implementation of the law will disappear. On the contrary, research points to the conclusion that the Personal Data Protection Agency will face new and more complex problems in the implementation

<sup>44</sup> Available at: <https://federalna.ba/apsolutna-sigurnost-ne-postoji-donijeti-novi-zakon-o-zastiti-licnih-podataka-ootyn>

<sup>45</sup> Available at: <https://www.aa.com.tr/ba/balkan/dan-za%C5%A1tite-podataka-u-bih-apsolutna-sigurnost-ne-postoji-donijeti-novi-zakon-o-za%C5%A1titi-li%C4%8Dnih-podataka/3119552>

<sup>46</sup> *Ibid.*

<sup>47</sup> See footnote 24.

<sup>48</sup> Available at: [https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-](https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-58a2d9b9945a_en?filename=SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf)

[58a2d9b9945a\\_en?filename=SWD\\_2023\\_691%20Bosnia%20and%20Herzegovina%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-58a2d9b9945a_en?filename=SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf)

<sup>49</sup> Available at: [https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions\\_en?prefLang=hr](https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en?prefLang=hr)

of the new law. As one EU study shows,<sup>50</sup> the national bodies for personal data protection in the EU countries faced an additional burden after the entry into force of the GDPR. It referred to the need for additional human, financial and technical resources due to the increased number of citizen complaints, lack of expertise in the private and public sector, etc.

For years, in its Reports on Personal Data Protection in BiH, the Agency called on the state legislator to adopt a new law harmonised with the GDPR.<sup>51</sup> The Agency also participated in drafting the text of the Proposal for the Personal Data Protection Law (the Proposal), a regulation harmonised with the GDPR, but not yet adopted in the legislative process at the time of writing this paper. In addition to the Agency, the BiH Ministry of Civil Affairs is another institution that is involved in the drafting of the text of the new regulation. As the media stated, one of the reasons for non-adoption of the new law is the lack of agreement on who should prepare the new text.<sup>52</sup> In 2017, the BiH Council of Ministers tasked the Ministry of Civil Affairs to prepare the text of the new law together with the competent agency, but this Ministry stated that they do not have an organisational unit dealing with personal data protection.<sup>53</sup> In 2019, the Agency prepared a Proposal, which is in the legislative procedure.<sup>54</sup> At the time of writing this paper, in a telephone conversation with an Agency official, we were informed that the text of the new law is being prepared by an interministerial group<sup>55</sup> headed by the BiH Ministry of Civil Affairs, and that this Ministry is in the position to influence the content of the text that is currently being developed. Representatives of the Ministry and the BiH Ministry of Justice, representatives of the Agency, of Directorate for European Integration, the BiH Ministry of Finance and Treasury and representatives of the BiH Ministry of Human Rights and Refugees participate in this working group.

In a broader context, GDPR is a regulation that should be politically uncontroversial and acceptable to different societies. This is seen in the fact that most of the Western Balkans countries have passed their own

<sup>50</sup> Available at: <https://fra.europa.eu/hr/publication/2024/gdpr-experiences-data-protection-authorities?page=1>

<sup>51</sup> Available at: <https://dnevni.ba/index.php/clanak/trazi-se-novi-zakon-o-zastiti-osobnih-podataka-bih>

<sup>52</sup> Available at: <https://www.paragraf.ba/dnevne-vijesti/30052018/30052018-vijest2.html>

<sup>53</sup> To verify this information, a request for access to information was submitted to this Ministry. Up to the writing of this paper, no response has been received.

<sup>54</sup> To verify this information, a request for access to information was submitted to this Ministry. Up to the writing of this paper, no response has been received.

<sup>55</sup> Decision establishing an interministerial working group to draft the law on personal data protection, Official Gazette of BiH br. 88/23.

laws modelled on the GDPR, as did countries around the world, such as Brazil, South Africa, the Philippines, Bahrain, California (the United States do not have a federal law on personal data protection), United Kingdom, India, etc. Multinational companies also apply the GDPR even where the national law does not require them to, because it is the highest global data protection standard. This phenomenon is called the “Brussels Effect”.<sup>56</sup> In addition, the GDPR has effects beyond the borders of the European Union. It applies to the processing of personal data in the activities of the controller or processor in the EU, regardless of whether the processing is carried out in the EU or not, as well as when the data subject is in the EU. This means that all persons who wish to operate in the EU single market must apply this regulation, regardless of whether they are located on its territory. In practice, this means that many companies from BiH have long been applying the GDPR if they operate in the EU and are familiar with the content of the regulation and their respective rights and obligations.<sup>57</sup> Adaptation to the GDPR-compliant Personal Data Protection Law should therefore be facilitated. Due to the above, we cannot identify any interest that BiH or its citizens may have to justify the current inactivity of the authorities in the passing of the new law.

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<sup>56</sup> *Decision establishing an interministerial working group to draft the law on personal data protection, Official Gazette of BiH br. 88/23.*

<sup>57</sup> Available at: <https://www.klix.ba/vijesti/bih/nova-zastita-licnih-podataka-bih-od-petka-mora-provoditi-eu-zakon-koji-docekuje-nespremna/180517077>

## **4. Comparative Analysis of Selected Parts of the Law, Proposal and GDPR**



## 4.1. General Requirements for Processing of Personal Data

General requirements for the processing of personal data are a set of requirements pertaining to the way in which personal data can be processed.

### **GDPR:**

This regulation and the current Law establish the general principles of personal data processing. A few differences can be noted here. The GDPR stipulates that the processing of personal data must be done in a way that will ensure appropriate security of the processed data, while the Law does not do so.

Furthermore, in the case of processing to protect the vital interests of the data subject, which is one of the legal grounds for data processing, the GDPR allows data processing without the consent of the data subject, while the Law does not.

### **The Law:**

For personal data to be processed in accordance with the Law, several principles must be satisfied: (1) personal data should be processed for specific, explicit and lawful purposes, (2) processing should be carried out lawfully and in a fair manner, (3) processing should be limited to personal data only to the extent and scope necessary to fulfil a specific purpose, (4) processed data should be accurate and, where necessary, updated, while inaccurate and incomplete data must be deleted or corrected, (5) processed data must not be stored longer than necessary for the purpose(s) for which they are processed, and (6) personal data obtained for different purposes cannot be combined or merged and consolidated.

The processing of personal data must be based on a valid ground. The Law stipulates that the legal grounds are the consent of the data subject (which refers to a specific, explicit and legitimate purpose) and other grounds.<sup>58</sup> In the case of processing to protect

<sup>58</sup> Article 6 of the Law stipulates the following grounds: **a)** if he is carrying out personal data processing as provided by law or which is required to comply with the duties specified by law; **b)** if it is necessary for the data subject to enter into negotiations on a contractual relationship or to fulfil the obligations agreed upon with the controller; **c)** if it is necessary for the protection of interests of the data subject when the consent of the data subject has to be obtained without undue delay or the processing has to be terminated and collected data destroyed; **d)** if the personal data processing is required in order to complete the task carried out in the public interest; **e)** if it is necessary for the protection of rights and interests exercised by the controller or user, and if such processing is not in contradiction with the right of the data subject to protection of personal privacy and personal life; **f)** if it is necessary for carrying out legitimate activities of political parties, political movements, civic associations, trade union organisations, religious communities, except where the interests for the fundamental rights and freedoms of the data subject prevail over the activities, especially the right to privacy in relation to the processing of personal data.

the vital interests of the data subject, the Law, in contrast to the GDPR, foresees the obligation of the controller to obtain the consent of the data subject without delay or to stop the processing and destroy the collected data. We can also see the difference in the ability to process personal data, as this is necessary for the legitimate activities of political parties, movements, citizens' associations, trade unions and religious communities. This ground is recognised by the Law, but not by the GDPR, which establishes that the processing is carried out in the course of legitimate activities with appropriate safeguards by a foundation, association or other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing refers solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects. However, in this part, the GDPR foresees an exception to the general rule according to which the processing of special categories of personal data is prohibited.

#### **The Proposal:**

The Proposal is aligned with the GDPR.

## **4.2. Data Protection Officer**

Data protection officer is a natural person in an organisation authorised and responsible for processing of personal data of its staff, customers, suppliers or any other persons (also referred to as data subjects) in accordance with applicable data protection rules.

#### **GDPR:**

The GDPR stipulates the obligation to appoint a data protection officer, the corresponding position and tasks. This obligation exists for controllers and processors in the public sector, except for courts acting in their judicial capacity, controllers and processors whose core activity consists of processing operations which, by virtue of their nature and/or their purposes, require regular and systematic monitoring of data subjects on a large scale, and controllers and processors whose core activity is the processing of special categories of personal data, and personal data relating to criminal convictions. For all other entities, appointing a data protection officer is an option, but not an obligation. Therefore, the

above-listed are obliged to appoint a data protection officer, while all other entities can appoint a data protection officer, but they do not have to.

**The Law:**

The Law does not provide for the obligation to appoint a data protection officer.

**The Proposal:**

The Proposal is aligned with the GDPR.

### **4.3. Representatives of Foreign Entities**

Representatives of foreign entities are relevant in situations in which the controller or processor of personal data is not based in the territory of Bosnia and Herzegovina but processes the personal data of persons in BiH.

**GDPR:**

Given the above, one can conclude that the current Data Protection Law differs greatly from the concept of appointing the relevant representatives according to the GDPR (e.g., such an appointment is mandatory under the GDPR in the case where a non-EU entity offers services to natural persons in the EU, irrespective of whether any equipment used by such an entity for the data processing is located in the EU).

**The Law:**

According to the current Law, where a controller who does not have a registered office on the territory of Bosnia and Herzegovina and where they use automatic or other equipment located on the territory of Bosnia and Herzegovina during personal data processing, they must appoint a representative, unless the equipment is used only for the purpose of data transit through Bosnia and Herzegovina. Thus, the Law foresees the obligation to appoint a representative in certain situations, but it does not follow the rules established by the GDPR. Furthermore, there is no obligation to appoint a representative for data control, which is different from the GDPR. In this, the Law is not harmonised with GDPR provisions. The GDPR does not refer to the location of equipment as a criterion for establishing an obligation.

**The Proposal:**

The Proposal is aligned with the GDPR.

## 4.4. Special Categories of Personal Data

Special categories of personal data constitute information about persons that are particularly sensitive and whose unauthorised processing may threaten the rights and freedoms of those persons. The idea behind designating certain types of personal data as special is to enable prescribing requirements for their processing and other procedures, which are stricter since the risk is higher thereon.

### GDPR:

This regulation designates as special categories of personal data those data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and genetic data, biometric data for the purpose of uniquely identifying a person, data concerning health or data concerning a natural person's sex life or sexual orientation.

### The Law:

The Law also recognises "special categories of personal data". However, unlike the GDPR, this term is defined differently and there are several rules that are different from the GDPR. First, the Law defines that these are data revealing: a) racial origin, nationality, national or ethnic origin, political opinion or party affiliation, trade union affiliation, religious, philosophical or other belief, health, genetic code, sex life; b) criminal conviction; c) biometric data. The difference in relation to the GDPR is that data on "sexual orientation" are included under special category of personal data in the GDPR, while not in the Law. Also, the Law provides that data on criminal convictions fall under this category, while this is not the case with the GDPR.

Furthermore, as in the GDPR, the Law provides for rules on processing of special categories of personal data. However, the GDPR stipulates some cases that are not recognised in the Law, for example, where processing of personal data is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.

### The Proposal:

The Proposal is aligned with the GDPR.



## 4.5. Rights of Data Subjects

Regulations on personal data provide for rights granted to data subjects in connection with processing. They serve to enable control over the personal data of these persons and to ensure transparency in the processing of such data.

### GDPR:

A number of rights are guaranteed to persons: a) Right to information: to be informed about the collection and use of personal data; b) Right of access: to receive confirmation of whether personal data is being processed and the right to access that data; c) Right to rectification: to rectify incorrect or incomplete personal data; d) Right to erasure ("right to be forgotten"): to delete personal data when they are no longer needed for the purpose for which they were collected; e) Right to restriction of processing: to restrict the processing of personal data in certain circumstances; f) Right to data portability: to transmit data to another controller; g) Right to object: to object to the processing of personal data; h) Rights related to automated individual decision-making, including profiling: the right not to be the subject of a decision based solely on automated processing.

### The Law:

The above rights of data subjects are also provided for in the Law, with the exception of the right to data portability. The fact that there are no clear rules envisaged on the exercise of these rights is considered a shortcoming of the Law. Thus, there are no deadlines in which the controller or processor must act when the right holder expresses the will to use them, except in the case of the right of access, for which a deadline of 30 days is provided. The way in which the guaranteed rights can be exercised is not provided either. In case of failure in the attempt to exercise their rights, the person has the right to protection from the Personal Data Protection Agency and the Court of Bosnia and Herzegovina.

### The Proposal:

The Proposal is aligned with the GDPR.

## 4.6. Registration and Records of Processing Activities

The obligation to keep records and register personal data processing activities aims to ensure the compliance of processors and controllers with their obligations, as well as to increase the transparency of the processing procedure. The GDPR, for example, stipulates that it is the duty of the controller to act in accordance with the principles and rules on personal data processing, but also to be able to prove that they acted in this way. Recording and registration of data processing activities should enable this.

### **GDPR:**

Certain organisations are required to keep records of data processing activities. This includes details such as the purpose of processing, categories of personal data processed, special categories of data, the existence of data transfers to third countries, the existence of data belonging to minors, retention periods and an overview of security and technical data protection measures. Records are kept in electronic form and in writing. These obligations apply to organisations with 250 employees or more, and it is also applicable to those with fewer employees if the processing it carries out is likely to result in a risk to the rights and freedoms of data subjects, if the processing is not occasional or the processing includes special categories of data or personal data relating to criminal convictions and offences.

### **The Law:**

The Law also envisages the obligation to keep records. In addition, there is the obligation to register the database with the Personal Data Protection Agency, which consolidates them into the Central Registry. Unlike the GDPR, where the obligation is applicable to both data controllers and data processors, the Law encompasses only controllers.

Furthermore, the obligation to register provided for by the Law is not envisaged by the GDPR. Accordingly, the by-law entitled the Rulebook on the Manner of Keeping Records and the Form for Records on Collections of Personal Data,<sup>59</sup> adopted on the basis of the Law, is not in compliance with the GDPR, because it closely elaborates the obligation to register.

### **The Proposal:**

The Proposal is aligned with the GDPR.

<sup>59</sup> Official Gazette of BiH, 52/09.

## 4.7.Data Transfer

Data transfer refers to their transfer outside the country or – for the European Union and the European Economic Area – outside the borders of these organisations. This includes all situations where data about citizens leave the territory of these countries and are transferred to third countries or international organisations. This may become an issue because it is possible that the country to which the transfer is made does not comply with the requirements ensuring that the rights and freedoms of persons in connection with the protection of their data are not violated.

### **GDPR:**

Strict conditions have been set for such transfers. There are two ways to transfer data: based on an adequacy decision, or, in the absence of such a decision, based on appropriate safeguards, including rights and remedies for individuals. With respect to transfer based on an adequacy decision, the European Commission will determine whether the country to which the data is transferred is considered a country with an adequate level of data protection based on a number of criteria (such as the rule of law, respect for human rights and fundamental freedoms, relevant legislation, the existence of an independent supervisory authority, assumed international obligations in the domain of privacy and personal data protection) and make a decision. Decisions are published on the Commission's website.<sup>60</sup> As for transfer of data subject to appropriate safeguards, it is examined whether the organisation that should receive them will ensure the safeguards envisaged by GDPR Article 46: standard data protection clauses, binding corporate rules, codes of conduct, certification mechanisms and ad hoc contractual clauses. Even in the absence of appropriate safeguards, data can be transferred due to specifically foreseen situations, such as if the data subject has given consent or the transfer is necessary for the implementation of an agreement between the subject and the data controller. Finally, there is a possibility of transfer without consent in situations of vital interests of data subjects or other persons if they are unable to give consent, where is necessary for important reasons of public interest or other prescribed reasons.

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<sup>60</sup> Available at: [https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions\\_en](https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en)

### **The Law:**

The rules on the transfer of data abroad have been established and are based on an assessment of the adequacy of the safeguard. The Law also defines when personal data can be transferred from Bosnia and Herzegovina to another country that does not provide appropriate safeguards. Unlike the GDPR, the Law does not provide details pertaining to data transfer abroad. The GDPR contains 6 articles to this in the text (Articles 44 through 50), while the Law has only one (Article 18).

### **The Proposal:**

The Proposal is substantially compliant with the GDPR. However, certain GDPR provisions governing this area are missing. The definitions of “cross-border processing” and “relevant and reasoned objection” are missing. Furthermore, there are provisions corresponding to GDPR Article 50, regulating international cooperation mechanisms for international data transfer, the provision on standard protection clauses, or the provision on codes of conduct in case of data transfer to third countries.

## **4.8.Sanctions for Infringements**

Sanctioning breaches of personal data protection is one of the central points of personal data protections regulations. It is also one of the major novelties introduced by the GDPR, since the previous Data Protection Directive envisaged quite mild sanctions and delegated to the member states to regulate the penal policy. Now, the fines and breaches subject to them are mostly harmonised in a single regulation.

### **GDPR:**

Extremely high fines are foreseen for infringements. The maximum stipulated fine amounts to EUR 20,000,000 or 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher. The fine is determined in any specific case giving regard to mitigating and aggravating factors, such as the nature, gravity and duration of the infringement, taking into account the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of

damage suffered by them, the intentional or negligent character of the infringement, any relevant previous infringements, whether the controller or processor notified the infringement, etc. In addition to fines provided for in the GDPR, Member States may lay down additional sanctions for infringements, provided that they are proportionate and effective, such as a written warning in cases of first and unintentional non-compliance or regular periodic data protection reviews and inspections.

### **The Law:**

Compared to the GDPR, the penalties provided by the Law are quite mild. The maximum fine for an individual infringement of the Law amounts to BAM 100,000 for a legal entity and BAM 15,000 for a representative of a legal or natural entity. These amounts constitute upper limits of penalties, while the lower limits vary depending on the violation. The lower limits are quite low, for example, the controller can be fined from BAM 10,000 to BAM 100,000 for a grave violation of the Law, such as processing personal data without the consent of the data subject, when there is no other ground for processing or when they unlawfully transfer personal data to a third party. For milder violations, the controller can be fined from BAM 5,000 to BAM 50,000. Penalties for persons who process personal data contrary to the conditions and scope determined by the controller or processor amount from BAM 500 to BAM 5,000.

### **The Proposal:**

Fines in the amount of up to BAM 200,000 or 4% of the total worldwide annual turnover of the preceding financial year (whichever is higher) are foreseen. These fines are higher than those set by the Law, but they are still not aligned with the GDPR, i.e., are lower than the sanctions provided for in this regulation. The GDPR allows the states to decide whether and to what extent administrative fines can be imposed on public authorities or entities based in the respective state. The Law does not contain such a prohibition, and the annual report confirms that public bodies have been sanctioned by the Agency. The Proposal, on the other hand, foresees that “notwithstanding the competences and powers of the Agency, administrative fines cannot be imposed on a public authority for violations of this law”. The penal provisions of

the Proposal envisage that for certain violations responsible persons will be punished by administrative fees of BAM 1,000 to BAM 10,000, while the employee will be fined from BAM 100 to BAM 1,000. Sanctioning employees is not in accordance with the GDPR; it is contrary to the purpose of the Law, and the aforementioned provisions should be removed from the draft. Responsible persons of the organisation are responsible for the lawfulness of the overall business and their responsibility cannot be transferred to the employees. In early June, the Belgian supervisory body for data protection<sup>61</sup> sanctioned the processing controller that unsuccessfully sought justification by claiming that the appointed data protection officer was responsible for the failure. The supervisory body rejected this argument and imposed a fine on the processing controller in the amount of 172 thousand EUR, for ignoring the request to erase personal data and for continuing to send marketing emails.

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<sup>61</sup> Dostupno na: <https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n-87-2024.pdf>.

## About the Author:

Nasir Muftić is a lecturer at the Faculty of Law of the University of Sarajevo. He graduated from the Faculty of Law of the University of Sarajevo, obtained an LL.M. degree in International Business Law from the Central European University in 2017, and his PhD at the University of Sarajevo. Nasir has experience in the fields of media and telecommunications law, civil litigation, intellectual property law, commercial contract drafting, and regulatory compliance. Nasir studies the intersection between private rights and tech. He has been hired as lecturer and consultant in media law and digital policy projects organised by the Council of Europe, the European Union, Bosnian and Herzegovinian government, and the Organization for Security and Co-operation in Europe. He advised the Council of Ministers of BiH in matters of the Council of Europe's CAI - Committee on Artificial Intelligence work.

## About Sarajevo Open Centre:

Sarajevo Open Centre (SOC) is an independent civil society organisation working to empower LGBTI people and women by engaging with the community and activists. SOC also promotes human rights of LGBTI people and the rights of women through advocacy, focusing on the legal framework and policies whose implementation will enable the creation of an equal society.

SOC coordinates the Initiative for Monitoring the European Integration of BiH, which brings together civil sector organisations from all over Bosnia and Herzegovina that analyse the process of European integration and the transposition of the EU acquis in domestic legislation. CEI TO DATA ROL Project was implemented under the Initiative, where the BiH legal framework for personal data protection was analysed with the aim of transposing the General Data Protection Regulation of the European Union (GDPR) in BiH.

For more information about our work, see [www.soc.ba](http://www.soc.ba) and [www.eu-monitoring.ba](http://www.eu-monitoring.ba).

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