

NEWSLETTER #1

SLOVENIA

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LEGAL CHANGES THAT STARTED TO APPLY IN SLOVENIA ON JANUARY 26 2023

Slovenia has passed several new acts in recent months, three of which started to apply on January 26, 2023. We've rounded up the key novelties of each act and present them below.

The first act (ZPOmK-2) regulates anti-competitive practices and mergers which have had or may have an effect on the territory of the Republic of Slovenia and serious obstacles to effective competition, as well as specific compensation provisions for violations of competition law.

The second act (ZVOP-2) establishes the rights, obligations, legality to protect personal data and the exercise of justification for interference with privacy, dignity, confidentiality of personal data, right to data self-determination or other fundamental rights of individuals when processing personal data.

The last presented act (ZvPot-1) sets out the rights of consumers when companies offer, sell and otherwise market goods, services and digital content and imposes obligations on companies, government authorities and others to ensure these rights.

ACT ON THE PREVENTION OF RESTRICTION OF COMPETITION ACT (ZPOMK-2)

On 26 January 2023, the new Act on the Prevention of Restriction of Competition started to apply, after it entered into force in October 2022. It replaced the previous Act ZPOmK-1 from 2008 and brought an upgrade of some provisions to the Slovenian legal system, in accordance with Directive (EU) 2019/1 of the European Parliament and of the Council, of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. Below is a summary of some of the features of the new Act.

1. Uniform administrative procedure for determining violations of the rules of competition law and administrative sanctioning of companies

Slovenian Competition Protection Agency (hereinafter: the Agency), which is the body responsible for the protection of competition on the Slovenian market, conducted two procedures for this purpose until the implementation of ZPOmK-2, namely the administrative one, in which it established the existence of a violation, and an infringement procedure, in which it imposed a fine. Now the law provides a uniform administrative procedure.

2. Administrative sanctioning of companies

Article 79 of the new Act defines an administrative offense as an act of a company that violates the Act or Article 101 or 102 of the Treaty on the Functioning of the European Union (hereinafter: TFEU) and is defined by the Act as an administrative offense, and is subject to an administrative sanction, which is imposed in the form of a lump sum or a periodic payment.

The maximum permissible sanction for an established violation is an amount equal to 10 percent of the company's annual turnover in the previous financial year. Article 93 sets out the conditions for a possible dismissal or reduction of an administrative sanction, while Article 95 brings the possibility of a reduction of an administrative sanction (by a maximum of 20 percent) based on an application for settlement. The new Act also introduced new rules in the area of limitation periods, as a five-year limitation period is now set for serious competition law infringements and a three-year limitation period for minor infringements.

3. Simplified notification of concentration procedure

In accordance with the principle of economy, the Act contains a new simplified procedure in which the Agency (under the conditions of Article 78) will be able to assess individual concentrations in a simplified procedure, which should eliminate certain administrative and cost burdens.

4. The Agency's investigatory powers

Pursuant to Article 52(1), the Agency now has the possibility, before issuing a decision to initiate proceedings, to address a request to each company, its shareholders, members of the management or supervisory bodies, persons employed by the undertaking and other persons for the provision of any information which may be relevant for the application of the new Act or of Articles 101 and 102 TFEU. The new Act has also harmonized the conditions for issuing an order for the search of premises and documents. It is also possible to search electronic devices. If a judge disagrees with the proposed search by the Agency, the latter has the option of appealing to the District Court in Ljubljana.

5. Use of information from the leniency statement

A leniency statement is an oral or written submission made voluntarily by a company or an authorized person to the authority, in which the company or authorized person provides information about the cartel and describes his or her role in it. The statement must be prepared specifically for the Agency with the purpose of waiving or reducing the monetary sanction within the framework of the leniency program. In Article 43, the new Act now further regulates the restrictions on the use of information from statements and stipulates that only the parties in the proceedings and only for the purpose of exercising their rights of defense may have access to the leniency statement. A party may use information from a leniency statement or a settlement application in proceedings before a court reviewing a decision of the Agency only where this is necessary for the exercise of its rights of defense and only for the purposes of assessing the distribution of the administrative sanction for the payment of which the cartel participants are jointly and severally liable, or for the purposes of assessing a decision by which the Agency has found an infringement of this Act or of Article 101 or 102 TFEU.

NEW DATA PROTECTION ACT (ZVOP-2)

On 15 December 2022, the National Assembly adopted the Data Protection Act (ZVOP-2), which transposes the European General Data Protection Regulation (GDPR) into Slovenian law and regulates national specificities in the area of personal data protection. The new law started to apply on 26 January 2023 and replaced the existing Data Protection Act (ZVOP-1) from 2004.

In addition to the GDPR, the new Act also regulates additional aspects of personal data protection, including in the areas of video surveillance, biometrics, processing of personal data for research purposes, authorized persons for the protection of personal data, sets an age limit for children's consent to the use of information society services, and allows for the imposition of fines as provided for in the GDPR.

Below are some of the new provisions introduced by the new Act:

1. The new Act provides that a person older than 15 years can give consent to the processing of data for the use of information society services.
2. It is specified that the special protection of personal data of deceased individuals, provided by the law, is guaranteed for 20 years after their death.
3. Article 22 of the new Act provides for the keeping of a log of the processing of personal data where large-scale processing of special types of personal data is carried out in automated processing systems or where there is regular and systematic monitoring of individuals, and in certain other cases set out in the Act. The processing log will have to contain the type of processing operation, the date and time, the identification of the person who carried out the

operation and the identification of the users of the personal data. The content of the processing log will have to be kept for two years from the end of the calendar year in which the acts were recorded. The Act provides for a period of two years (i.e. until 26 January 2025) for the harmonization of the processing logs.

4. The new Act determines the application of the provisions on security requirements and incident notification of the law governing information security (the Information Security Act), which apply to providers of essential services. The application applies only to certain information systems, including those where personal data of more than 100,000 individuals are processed on the basis of the law and where special types of personal data of more than 10,000 individuals are processed. The Act sets a deadline of three years (i.e. until 26.1.2026) for the processing of personal data to comply with this provision.
5. The Act provides that the implementation of the provisions of the GDPR and the Act shall be supervised by the Information Commissioner, who, as an infringement authority, is also competent to impose fines in accordance with the GDPR and the new Act. This will allow for the imposition of the high fines provided in the GDPR, including a fine of up to €20 million or 4% of annual sales (whichever amount is greater), which can be imposed on a company. Until the new Act came into force, it was not possible to impose such fines under the GDPR.

NEW CONSUMER PROTECTION ACT (ZVPOT-1)

The Slovenian National Assembly has adopted the new Consumer Protection Act (the Act), which implements three European directives aimed at harmonizing the level of consumer protection within the EU Member States. Below we present important legislative changes introduced by the Act, which now also incorporates the provisions of the formerly Act on Consumer Protection against Unfair Commercial Practices.

1. Material defect or non-conformity with the contract

For sales contracts concluded from 26 January 2023 onwards (i.e. after the Act entered into force), the rule that the consumer may freely choose between the means of enforcing a material defect, i.e. whether to request repair, replacement of the product, a proportionate reduction or a full refund of the purchase price, will no longer apply. Under the new legislation, consumers will be more limited, as they will first be able to request either repair or replacement of the goods with a new and faultless one (the choice will, except in certain cases, be up to the consumer). Only then, if the seller fails to do so, the consumer will be able to claim a proportionate reduction or a full refund of the purchase price (i.e. withdraw from the contract).

2. Non-conformity of the goods

In the event of non-conformity of the goods which becomes apparent less than 30 days after delivery, the consumer has the so-called right to reject. This means that the consumer can withdraw from the contract within this period and claim a refund of the purchase price without first having to request that the goods be repaired or replaced. The period during which the legal presumption that the non-conformity of the goods had already existed at the time of delivery is extended from 6 to 12 months. The burden of proof will be on the seller to prove that the defect complained of did not exist when the goods were delivered.

3. Warranty

With regards to warranties, the Act introduces a key change. For products placed on the market after the Act entered into force (i.e. on the 26 January 2023), consumers will be able to claim a warranty only from the guarantor, i.e. the company providing the warranty or from its authorized repairer. The Act also abolishes the mandatory 1-month warranty for used products and introduces a shorter deadline (30 instead of 45 days) in which the guarantor will have to correct errors. The previous deadline of 45 days will still apply to products that will be placed on the market before the law comes into force. The deadline may be extended by 15 days, and the manufacturer will have to notify the consumer before the deadline expires and state the reasons for the extension of the deadline.

4. Unfair contract terms

In terms of substance, the unfair contract terms regime remains unchanged. The aim of these provision is primarily to eliminate the possibility of divergent interpretations that have arisen in case law. The law specifically states that the unfairness of contractual terms, even if they are written in clear and understandable language, can also be judged in relation to the definition of the main object of the contract and in relation to the adequacy between the price and payment for the exchanged service, goods or digital content.

Although the Directive on unfair terms in consumer contracts narrows the scope of assessment of contract terms, if they are written in clear and understandable language, the level of protection in Slovenia is high, as the Directive allows member states to maintain or improve the level of consumer protection.

5. Changes in the digital area

The Act will also introduce new developments in the digital area. In practice, this means that it will also cover computer programs, various audio and video files, apps, digital games, data roaming and so on. The Act foresees an obligation for companies to provide necessary updates, and warranty claims for consumers for restoring compliance, a proportionate reduction of the purchase price or withdrawal from the contract and a full refund of the purchase price.

We point out that the provisions regarding contracts for the supply of digital content or services will also apply to a contract in which the consumer agrees to provide his/her personal data to the company in lieu of (monetary) payment of the purchase price, and the company would use the data for purposes beyond the mere supply of the digital content or service, which is particularly common on social networks.

6. Online marketplaces

Online marketplaces (such as *Wolt* and *Mimovrste*) will need to provide consumers with information on how offers are ranked, with whom the contract is being concluded in a specific case and whether the price offered is adjusted on the basis of the consumer's profiling. In addition to these new features, the Act also prohibits hidden advertising and the misrepresentation of customer ratings and recommendations.

7. Prohibition of dual quality of goods

The Act considers any marketing of goods in one member state as identical to goods marketed in other member states, provided that these goods have a significantly different composition or characteristics (so-called double quality of goods) as a misleading business practice. The new regulation prohibits such practice as it could mislead consumers into making a purchase that they would not otherwise have made.

8. Obligations regarding discounts

The Act clarifies the obligation of companies to offer discounts. When reducing the price of goods, companies will have to label both the previous price and the reduced price, with the previous price being the lowest price labelled in the last 30 days before the reduction. In cases of gradual and continuous reduction, the previous price will be the price that was the lowest at least 30 days before the first reduction.

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