

NEW DEVELOPMENTS IN PERSONAL DATA PROTECTION

New Personal Data Processing Act

Act No. 110/2019, on processing personal data, came into effect on April 24, 2019, replacing Act No. 101/2000, on personal data protection, and clarifying certain provisions in the GDPR. Although this act does not introduce any fundamental changes, there are a few things to note:

- Section 7 sets the minimum age at which minors can grant consent to processing their personal data in connection with information society services as 15 years. A suggested amendment would have set this age at the lowest possible level of 13, but the Chamber of Deputies rejected this version due to the age limit for civil and criminal liability for minors.
- Section 8 confirmed the option for controllers to fulfil their duty to inform in a manner allowing remote access. Public access to brief, comprehensible and transparent information on processing is a sufficient guarantee that the data subject has been suitably informed.
- According to Section 10, the controller does not have to perform the data protection impact assessment if the processing is required in order to fulfil legal obligations (e.g. an employer fulfilling its legal obligations towards its employees). In this connection we recommend reviewing the list of data processing operations subject to the data protection impact assessment as issued by the Personal Data Protection Office.
- If controllers want confirmation that they are GDPR compliant, they can have a certification issued pursuant to Section 15 from the Czech Institute for Accreditation (Český institut pro akreditaci, o.p.s.), which has been authorized to issue accreditation certifications by the Personal Data Protection Office. Accreditation is entirely voluntary and serves to increase the credibility of the controller.
- One of the risks lies in Section 62, which presents a very wide definition of the offenses for which the extremely high penalties specified in the GDPR can be imposed. The limit on penalties is only given for the public sphere, where the maximum penalty for public authorities and public entities is set at CZK 10,000,000. This limitation was proposed primarily because these entities are financed from the public purse.

In any case we would recommend consulting experts who can verify that your current personal data protection policies are sufficient and that the new Czech legislation on personal data protection does not put you at risk.

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Brexit

The Brexit date has been pushed back again, this time to the end of October 2019, although the United Kingdom can leave the European Union earlier if it approves the negotiated deal. Whether Brexit is finalized this autumn or the date is changed yet again, it is important to keep in mind the consequences of Brexit for personal data processing and take the necessary measures to eliminate risks in a timely manner.

The two main scenarios are as follows:

- On the date of a no-deal Brexit, the free movement of personal data guaranteed under the GDPR will cease. The United Kingdom will become an unsecured non-EU member state from the standpoint of the GDPR and the transmission of personal data to the United Kingdom will only be permissible under the conditions stipulated in the GDPR. The most efficient solution currently appears to involve entering into standard contractual clauses.
- A Brexit deal will invoke the contents of the final deal as negotiated and approved. The deal that has already been rejected three times includes a transition period until the end of 2020, during which time the free movement of personal data between the EU and UK would remain guaranteed. The European Commission would use this time to work on passing a decision whereunder the United Kingdom would secure a suitable level of protection, i.e. no additional measures such as standard contractual clauses would be required. Meanwhile, the United Kingdom would use the same time period to secure comparable measures for the free movement of personal data to the EU.

For this reason we recommend taking the following steps as soon as possible:

- obtain a reliable overview of the situations in which your company transmits personal data to or receives personal data from the United Kingdom,
- determine what position the contractual partner holds (processor, controller or recipient) and
- if a no-deal Brexit becomes imminent, or the signed and approved Brexit deal does not include provisions allowing the free movement of personal data between the EU and UK, then take the necessary measures to secure personal data, such as standard contractual clauses.

The most common situations involving the transmission of personal data that must be addressed from a GDPR standpoint include the personal data of employees of a Czech subsidiary handed over for processing to the parent company based in the United Kingdom and receiving services from a British supplier that require personal data processing where the controller is a Czech company.

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Processor audits

The personal data controller can perform a processor audit on a processor it works with or intends to work with in order to prove that it meets the obligation pursuant to Article 28(1) of the GDPR, under which the controller will use only processors that provide sufficient guarantees of introducing suitable technical and organizational measures so that the processing operation meets GDPR requirements and so as to secure protection of the data subject's rights.

The audit can be performed in the following situations:

- regular (relevant e.g. with long-term cooperation under the same, unverified conditions)
- extraordinary (e.g. certain circumstances lead the controller to conclude that the processor is not providing sufficient guarantee that it has introduced suitable technical and organizational measures, such as a serious breach of personal data security).
- in other suitable cases (e.g. in connection with negotiating the contents of a personal data processing agreement and setting up cooperation)

Controllers can perform the processor audit themselves or engage experts to do so for them. Especially large companies with a greater number of processors would be well advised to set up an internal regulation with the rules for the correct, timely and suitable performance of a processor audit. If your company needs to perform processor audits, please don't hesitate to contact us. We will be happy to help.

Inspections and Fines

Since the GDPR took effect on May 25, 2018, a total of 38 inspections have been completed, 16 of which found a breach of the Personal Data Protection Act. Another 23 inspections are under way.

As of today's date, the Office has imposed eight fines in connection with the GDPR for a combined total of CZK 370,000.

Other news

On May 23, 2019 the Personal Data Protection Office issued a critical statement on the Constitutional Court ruling on data retention, File No. Pl. ÚS 45/17, dated May 14, 2019. The Court's ruling concerned the proposal by a group of MPs to repeal certain provisions of Act No. 127/2005, on electronic communications and certain provisions of other acts. The contested legislation requires mobile

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operators to retain data on all their clients for six months retroactively. This data can then be provided to law enforcement and criminal justice authorities, including the Czech Police, in order to prevent or uncover terrorist threats, and to other authorities. The Office for Personal Data Protection ("the Office") stated that the Constitutional Court's finding made it difficult for the Office, as the Office is bound in its activities not only by this Constitutional Court judgment, but also by the existing case law of the Court of Justice of the European Union, which differs from the Constitutional Court's finding. For more information, please see https://www.uoou.cz/vismo/dokumenty2.asp?id_org=200144&id=34217.

bpv BRAUN PARTNERS s.r.o.

Palác Myslbek

Ovocný trh 8

CZ-110 00 Praha 1

Tel.: (+420) 224 490 000

Fax: (+420) 224 490 033

www.bpv-bp.cominfo@bpv-bp.com

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