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School of Data Privacy

Regulation (EU) 2016/679 of the EP and of the Council of 27 April 2016, the General Data Protection Regulation (the "GDPR") replaces Directive 95/46/EC (the "Directive"), which currently forms part of Slovak law through Act no. 122/2013 Coll. and part of Czech law through Act no. 101/2000 Coll., the Data Protection Act. The GDPR will come into effect on 25 May 2018, when it will be directly applicable throughout the EU. It will apply to those who process personal data, as well as to natural persons whose personal data is the subject of processing.

To help you navigate the maze of obligations introduced by the GDPR, we have created a regular weekly news series on this topic, which is without a doubt the most important legislative change in European history in the field of data protection.

If you wish to receive the School of Data Privacy series directly to your e-mail box, please subscribe at office@bapol.sk or office@bapol.cz, or by calling the phone number +421 220 251 311 and +420 251 009 111.

Lesson 7 of 16

Controller's obligation to inform data subjects

Below you will learn:

Important changes

- The GDPR regulates in more detail the extent of information that must be provided to data subjects;
- The GDPR emphasizes the requirement of clarity and intelligibility of the information provided to data subjects.

Compliance Action Plan

Controllers should:

- review existing data protection notifications and ensure that the wording complies with the GDPR;
- demonstrably notify data subjects of information required by the GDPR;
- ensure that the notification is carried out on time, comprehensibly and intelligibly.

In relation to the controller's obligation to notify data subjects

One of the fundamental principles of processing personal data is the principle of transparency. Therefore, the GDPR imposes an obligation on controllers to take appropriate measures to provide any information relating to the processing to the data subject, the extent of which the GDPR outlines.

The principle of transparency requires that any information addressed to the public or to the data subject be concise, easily accessible and easy to understand, and that clear and plain language and, additionally, where appropriate, visualisation be used. If such information is to be provided to the public, it may be given in electronic form, for example, through a website. This is of particular relevance in situations where the proliferation of actors and the technological complexity of practice make it difficult for the data subject to know and understand whether, by whom and for what purpose, personal data relating to him or her are being collected, such as in the case of online advertising.

The information obligation is fairly broad, whereby the legal framework for providing information to data subjects is as follows¹:

- information must be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language;
- information can be given in writing, electronically or by other means, or verbally upon request;
- information must be provided to the data subject free of charge. However, in case of unfounded or excessive requests by a data subject, the controller may charge a reasonable fee or refuse to act on the request (but bears the burden of demonstrating that the request is unfounded or excessive);
- the controller is entitled to request additional information necessary to confirm the data subject's identity;
- certain information may be provided in combination with standardized icons, which the Commission may introduce by means of delegated acts and the use of which will be shaped by later practice.

What information must be provided?

In comparison to the current Czech² and Slovak³ legal regulation, controllers will also be obligated to provide data subjects with the following information⁴:

- contact details⁵ of the controller, the controller's proxy, and the data protection officer, if he/she is appointed;

¹ Article 12 of the GDPR.

² Article 12 of the Data Protection Act no. 101/2000 Coll., regulating data subject's access to information about the purpose of processing personal data, personal data which are subject of processing, the recipients, etc.

³ Article 15(1) of the Data Protection Act no. 122/2013 Coll., regulating the obligation to provide information about the identity and contact details of the controller and their proxy, if existing, purposes of processing, recipients and transfer of personal data to third countries.

⁴ Article 13 and 14 of the GDPR.

⁵ So far the law regulated the obligation to provide information about the "identity" (please refer to Article 10 let. a), Article 11 first indent of the Directive) in the Czech Act transposed as "who" (article 11(1)), in the Slovak Act transposed as "identification data" (article 15(1) let. a)). The legal literature explains the identification of the controller or processor as the obligation to provide a legal person's business name, ID no. and address, and a natural person's name, surname and place of residence or business.

- legal grounds for the processing, and if the processing is based on Article 6 (1) letter f)⁶ of the GDPR, also the legitimate interests pursued by the controller or by a third party;
- the period for which the personal data will be stored, or the criteria used to determine that period;
- information about whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and of the possible consequences of failure to provide such data;
- specification of the data subject's rights (for completeness we provide the complete list of the data subject's rights regulated by the GDPR, not just the new ones):
 - right to request from the controller access to his/her personal data;
 - right to rectification, completion, erasure or restriction of processing personal data;
 - right to object to processing;
 - right to portability of personal data;
 - the right to withdraw consent at any time if the processing occurs based on consent;
 - right to lodge a complaint with a supervisory authority;
 - right to know the existence of automated decision-making, including profiling.

Under Slovak conditions (this does not apply to the Czech Republic), processors will no longer need to inform data subjects about the processor by the processor and about the form of publication, if personal data was to be made public.

Further, under Slovak conditions the GDPR changes the current Slovak legal regulation⁷ so that if the controller obtains personal data directly from the data subject based on the legal grounds of a special law, international treaty or directly enforceable Act of the EU (in practice this will concern obtaining personal data for employment purposes) he/she will be obligated to provide the above-mentioned information to the data subject. The current legal regulation contains an exception, where in such cases notifications are not required, and this exception will not apply under the GDPR.

When should information be provided?

If the controller collects personal data directly from the data subject, he/she notifies him/her when the personal data is obtained⁸.

If the controller does not obtain personal data directly from the data subject, he/she provides the information:

- within a reasonable period after obtaining the personal data, but at the latest within one month, having regard to the specific circumstances in which the personal data are processed;

⁶ "Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child."

⁷ Article 15(3) of the Data Protection Act no. 122/2013 Coll.

⁸ Pursuant to the Czech Act, this should occur when collecting data, i.e. at the latest when the controller requests data from the data subject. However, expert opinions deem the only acceptable interpretation that reflects the aim of the provision, the one that states that the data subject must be informed prior to the collection of personal data (compare e.g. Kučerová, A., Nováková, L., Foldová, V., Nonnemann, F., Pospíšil, D.: Data Protection Act. Commentary. 1st edition. Prague: C. H. Beck, 2012, s. 211).

- if the personal data are to be used for communication with the data subject, at the latest at the time of the first communication with that data subject; or
- if a disclosure to another recipient is envisaged, at the latest when the personal data are first disclosed.

In such case the controller is obliged to inform the data subject, among the matters described above, of the categories of personal data processed about him/her and from which source the personal data originates, and if applicable, whether it came from publicly accessible sources.

Exceptions from the information obligation

The controller does not have to inform the data subject, if:

- the data subject already has the information;
- the provision of such information proves impossible or would involve a disproportionate effort, or in so far as the information obligation is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller must take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available;
- obtaining or disclosure is expressly laid down by Union or Member State law, to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests⁹; or
- where the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy; as well as
- if the GDPR does not apply to the processing of personal data, i.e.:
 - the processing is carried out by Member States in connection to activities related to common foreign and security policy pursuant to Title V, Chapter 2 of the Treaty on EU;
 - respective bodies for purposes of prevention, investigation, discovering or prosecuting of crimes or the execution of punishment, including prevention from threats for public security and their prevention, see Directive of the EP and of the Council (EU) 2016/680 dated 37 April 2016.

Further processing

If the controller intends to further process the personal data for a purpose other than that for which the personal data was obtained, the controller must provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as described above. (For more information on the lawfulness of further processing please refer to Lesson 3.)

⁹ An exemption is regulated in Article 3(6) of the Czech Act in connection to ensuring security and defence of the State, of the public order, in connection to prevention, investigation, discovering of crimes and punishing crimes, important economic or financial interest of the Czech Republic and the EU or in connection to accessing files of former State Secret Services, and then in Article 11 (3) let. b) of the Czech Act, where it is regulated by a special Act (e.g. Act no. 372/2011 Coll., on Health Services) or data is necessary in relation to lodging claims and obligations of the controller arising from a special Act. Entities carrying out activities pursuant to special Acts are not exempt from the applicability of the Act as such, but they are exempt from the obligations regulating the basic parameters of data processing and obligations in relation to data subjects, such as the information obligation and the obligations relating to the data subject's access to his/her personal data. By means of an example, most activities of the Police corps would be difficult to realize under the application of the obligation to inform a person immediately about the collection of their data, or based on his/her request to fully disclose the processed personal data.

What now

The information obligation of controllers to data subjects reflects one of the fundamental principles of processing personal data, which is the principle of transparency. To ensure transparency of processing it is necessary that the controllers inform data subjects about the circumstances of the processing in an intelligible and comprehensible manner. The extent of the information obligation is regulated by the GDPR. It might be a challenge to combine the obligation to provide a quite extensive amount of information with the request that the information should be concise.

In our opinion the future may bring certain interpretation challenges in connection to the provision regulating the information obligation, since the respective obligations and exemptions for certain types of processing or controllers are not regulated unambiguously in an absolute sense and their application could be somewhat obscure.

Further information can be found here:

Recitals 58, 60 – 63

Articles 12 – 14

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