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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 14 of 16

Remedies

Below you will learn:

Important changes

Data subjects (and in some cases also other persons, e.g. controllers) have the following remedies at their disposal:

- Right to lodge a complaint with a supervisory authority;
- Right to an effective judicial remedy against a supervisory authority;
- Right to an effective judicial remedy against a controller or processor;
- Right to compensation for material or non-material damage.

Compliance Action Plan

- Controllers and processors should by means of effective contractual measures mutually and in detail define the extent of their obligations, the sanctions for their breach, how to resolve disputes and liabilities involving data subjects.
- Joint controllers should agree on the extent of their obligations in order to reach compliance with the GDPR, the extent of liability for breach of the GDPR, how to resolve disputes and the method of carrying the liability for damage.

In relation to remedies

Right to lodge a complaint with a supervisory authority

In the first place, the GDPR grants data subjects the right to lodge a complaint with a supervisory authority, if he/she believes that the processing of his/her personal data violates the GDPR. The purpose of this legal instrument is to protect the rights the GDPR grants data subjects when facing violations by controllers or processors.

As mentioned in Lesson 13, the processing operations of the controller can be subject to the supervision of at least two supervisory authorities, i.e. the authority competent pursuant to the place of the controller's registration or the lead supervisory authority, competent to supervise processing operations of the controller or a group of controllers within the Union.

To make the data subject's access to the supervisory authority easier, the GDPR regulates that the data subject may lodge a complaint with the supervisory authority first in the Member State of his/her habitual residence, place of work or place of the alleged infringement.

The supervisory authority is obliged to investigate the event which is the subject of the complaint, i.e. to ascertain whether the infringement in fact occurred and if so, to ensure rectification. The supervisory authority to which the complaint was lodged must also inform the complainant on the progress and the outcome of the complaint, including the possibility of a judicial remedy (please see below).

If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.

Right to an effective judicial remedy against the decision of a supervisory authority

Natural or legal persons

The GDPR grants each natural or legal person (i.e. also the controllers and processors) the right to an effective judicial remedy (i.e. to file a claim) against a legally binding decision of a supervisory authority concerning them. The purpose of this legal instrument is judicial review of a legally binding decision of a supervisory authority, if the person, to whom the decision relates, believes that the decision is incorrect.

The person affected by a binding decision of the supervisory authority can contest it by lodging a claim at the court. The decision may concern e.g. the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, the right to an effective judicial remedy does not encompass measures taken by supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established.

Where the said court has a reason to believe that proceedings concerning the same processing¹ are brought before a competent court in another Member State, it contacts that court in order to confirm the information. If such proceedings are pending before a court in another Member State, any court other than the court first seized may stay its proceedings, apparently until the final decision of such proceedings². Such court(s) may, on request of one of the parties, decline

¹ E.g. proceedings with the same subject matter as regards processing by the same controller or processor, or the same cause of action.

² Refer to Article 11(2) of the GDPR; the principle preventing the possibility to maintain parallel proceedings in different Member States and the possibility to have them decided by contradictory decisions.

jurisdiction in favour of the court first seized if that court has jurisdiction over the proceedings in question and its law permits the consolidation of such related proceedings.³

Pursuant to Recital 143, any natural or legal person and also the affected supervisory authority which is the addressee of a Board's decision, has the right to bring an action for annulment of such decision of the Board before the EU Court of Justice.

Data subjects

Pursuant to the GDPR, each data subject has the right to an effective judicial remedy, i.e. a right to file a claim against the supervisory authority at a competent court, where the supervisory authority has not processed his/her complaint or did not inform the data subject within three months of the progress in processing the complaint or the outcome thereof. The purpose of this legal instrument is to grant the data subject the possibility of remedy against the inactivity of a competent supervisory authority.

Proceedings must be brought before the court of the Member State in which the supervisory authority is established.

Where proceedings are brought against a decision of a supervisory authority which was preceded by an opinion or a decision of the Board in the consistency mechanism, the supervisory authority forwards that opinion or decision to the court.

Right to an effective judicial remedy against the controller or the processor

Pursuant to the GDPR, the data subject has the right to file a claim at court where he/she considers that his/her rights under the GDPR have been infringed as a result of the processing of his/her personal data in non-compliance with the GDPR.

Proceedings against a controller or a processor are brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his/her habitual residence, unless the controller or processor is a public authority of a Member State acting in the exercise of its public powers.

Right to compensation and liability

The GDPR also grants each person (i.e. not just the data subject), who has suffered material or non-material damage as a result of an infringement of the GDPR, the right to receive compensation from the controller or processor for the damage suffered. The entity obliged to compensate such damage will be the controller or the processor, according to the circumstances of the case.

The controller's and the processor's liability for damage is regulated as follows:

- Each *controller* involved in processing is liable for the damage caused by processing which infringes the GDPR.
- The *processor* is liable for the damage caused by processing only where it has not complied with obligations of the GDPR specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.
- Where more than one controller or processor, or both a controller and a processor, are involved in the same processing and where they are responsible for any damage caused by processing, each controller or processor will be held liable for the entire damage. That means that the data subject is entitled to claim the right to compensation of damage against any such entity. Where the controller or processor has paid full compensation for

³ Refer to Article 81(3) of the GDPR.

the damage suffered, that controller or processor is entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of responsibility for the damage.

The controller or processor will be exempt from liability if it proves that it is not in any way responsible for the event giving rise to the damage.

The court proceedings for exercising the right to receive compensation must be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his/her habitual residence, unless the controller or processor is a public authority of a Member State acting in the exercise of its public powers.

What now

Besides the obvious duty to comply with the obligations imposed by the GDPR on controllers and processors in connection with the processing of personal data, controllers and processors should carefully and in detail contractually agree their mutual rights and duties and the responsibilities arising thereof.

With regard to the joint liability for the entire damage against the damaged subject and with regard to the international character of legal relationships it is important to pay due attention to monitoring the legal existence and economic standing of the participating entities, legal proceedings initiated against them and to secure effective compensation of a proportional part of the compensation paid for damages by other controllers or processors.

Further information can be found here:

Recitals 141 - 147

Articles of Chapter VIII

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