

# Legal Update

from the field of



Autumn 2022

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## The transitional period of the original standard contractual clauses comes to an end!

Your attention is drawn to the approaching date by which the original standard contractual clauses adopted under Directive 95/46/EC of the European Parliament and of the Council ("the original SCC") must be replaced by standard contractual clauses effective as of 27 June 2021 and adopted in accordance to GDPR ("the new SCC"). The standard contractual clauses are generally, according to Article 46(1) and (2)(c) of the GDPR, a contractual instrument of a contractual nature intended for exporters and importers of personal data, on the basis of which personal data may be transferred outside the EU/EEA. **The transitional period** set by the Decision of the European Commission for 15 months from the entry into force of the new SCCs (Implementing Decision (2021/914) on standard contractual clauses) **ends on 27 December 2022**. Until that date, transfers of personal data based on the original SCCs can still be relied upon for the performance of contracts concluded before the date of the cancellation of the original clauses, provided that the processing operations that are the subject of the contract remain unchanged. **However, after 27 December 2022, all original SCCs must be replaced by new SCCs.** Therefore, if you transfer personal data to third countries, we recommend checking the wording of the standard contractual clauses that are usually annexed to data processing agreements (DPAs) and, if necessary, supplementing the original SCCs with the necessary elements or replacing them with new SCCs. The new SCCs are based on a modular system, where individual modules can be selected according to the needs and nature of the specific transfer of personal data to third countries.

## Traffic camera footage provided to tax authorities

The Supreme Administrative Court of the Czech Republic ("SAC CR") dealt with an interesting case where personal data collected by a public administration body for a certain purpose were provided to another public administration body for a different purpose. The Supreme Administrative Court of the Czech Republic ruled in judgment No. [9 Afs 147/2020 - 34](#) on the legitimacy of the provision of traffic camera footage of the movement of a taxpayer's vehicle by the Police of the Czech Republic ("PCR") to the tax administrator for the purposes of tax proceedings. The Tax Office for the Ústí nad Labem Region ("the tax administrator") **used the records as evidence** to dispute the claimant's assertion as a tax subject regarding the use of the vehicle for its economic activity pursuant to Section 72 of the VAT Act (Act No. 235/2004 Coll. as amended). The tax administrator had doubts as to the legitimacy of the VAT deduction claimed by the taxpayer (the data subject) in connection with the acquisition of its own vehicle and the submitted logbook with the competing content of the CCTV footage of the vehicle's movements obtained from the PCR. The PCR provided the tax authorities with data from the Automatic Vehicle Control ('AVC') system, which includes the registration number of the motor vehicle, the date and time of the passage, the marking of the passage sensor, a black and white photograph of the registration number and a black and white photograph of the motor vehicle. The taxpayer did not prove that the conditions for entitlement to deduction under the VAT Act were fulfilled, namely the use of the vehicle only in the context of economic activity.

By the tax administrator's payment assessment, the applicant was assessed an excessive deduction under the VAT Act in the amount of CZK 413,499. The applicant's appeal against that payment assessment was rejected by the Appellate Tax

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Directorate in Brno ("ATD"). Against that decision, the applicant brought an action before the Regional Court in Ústí nad Labem, which dismissed it as unfounded. In his appeal to the SAC CR, the complainant (the data subject) considered that the processing of vehicle movements from CCTV cameras at specific times on specific roads for the purposes of the tax administrator did not comply with Section 60 of the Police Act of the Czech Republic (Act No 273/2008 Coll.). The processing of the CCTV footage was carried out on the basis of a request by the tax administrator to the PCR to provide information pursuant to Article 57(1) of the Tax Code (Act No. 280/2009 Coll., as amended), i.e. primarily for the purposes of the tax proceedings and not for the PCR's own purposes. According to the complainant, the CCTV footage could not therefore be evidence pursuant to Article 93(1) of the Tax Code.

The APD stated that **the PCR took the traffic camera records for its own purposes** (ensuring public order in traffic) **and the tax administrator was entitled to request the selected records**, which were already in the possession of the PCR, **in order to obtain data necessary for tax administration**. At the same time, the PCR was obliged to provide such data. The records of the movement of the complainant's vehicle were therefore requested in accordance with the law and constituted lawful evidence which could be used in the tax proceedings. The records were not taken on the instructions of the tax authorities.

The SAC CR concluded that the data on the movement of the vehicle were necessary from the point of view of tax administration within the meaning of Section 57(1) of the Tax Code, and the tax administrator could not obtain them from its own records in accordance with Section 58(3) of the Tax Code. In the case in question, the tax administrator contacted the PCR only after it had received the logbook from the taxpayer,

which, however, was unreliable, in particular because of the date of the first journey, which preceded the date of taking over the vehicle according to the documents provided by the car dealer. Therefore, **the SAC CR agreed** with the conclusion of the Regional Court and the APD **that the tax administrator was entitled to request the records in question from the PCR, as they were data necessary for tax administration and the PCR was an entity obliged to provide such data to the tax administrator upon request.**

## ÚOOÚ: Nové hrozby pro ochranu osobních údajů

The Office for Personal Data Protection ("OPPD"), in cooperation with the National Cyber Security Bureau ("NCSB"), has issued [a warning about new threats](#), not only to the protection of personal data. Data controllers should therefore take measures to prevent the risk of attacks and thus potential personal data breaches. The warning relates to phishing scams, this time with the theme of a housing allowance offer from the Ministry of Labour and Social Affairs ("MoLSA"). In the warning, the OPPD states that the aim of the current threat is to persuade recipients to log in to a fraudulent website using their bank identity. The entered login credentials are then actively used by the attackers to log into real internet banking, resulting in a two-factor authentication prompt being sent, which the victim then confirms. If a cyber-attack occurs and the controller has not taken the steps recommended by the alert to ensure adequate protection of personal data, this may be assessed as a breach of the controller's obligations if the cyber-attack and data breach occurred after the publication of the OPPD alert.

## 226 cookie complaints

The efforts of Max Schrems' NOYB platform on data protection activism continue. [NOYB has filed an additional 226](#)

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[complaints with 18 supervisory authorities](#) for cookie bar violations. We covered this issue from the Czech perspective of The Office for Personal Data Protection in [our last GDPR Legal Update](#). The NOYB has filed complaints against websites that use popular cookie bar software ("OneTrust"), but which have deceptive settings the NOYB claims. After the first batch of complaints in May 2021 ([information here](#)), many sites using OneTrust modified their settings and added "decline" buttons for the purpose of refusing consent to process cookies. OneTrust has also changed its default settings to be more GDPR compliant. However, according to NOYB, there are still many non-compliant websites that try to force user consent to cookie processing by making refusing processing require a disproportionately burdensome "clickathon."

NOYB further proclaims that it will target not only OneTrust cookie bars but also other providers of this service e.g. TrustArc, Cookie-bot, Usercentrics, Quantcast. Due to the large number of NOYB complaints across Europe (101 complaints in August 2021, 226 complaints now), the European Data Protection Board ("EDPB") had to set up a special working group to deal with the complaints.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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