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Inspection plan of The Office for Personal Data Protection in 2023

The Office for Personal Data Protection (hereinafter The Office) has published its inspection plan for 2023. In its inspection activities in 2023, the Office will focus, among other things, on:

- processing of personal data in attendance systems (which categories of personal data are processed, for how long and whether they are processed to the extent necessary to fulfil the purpose);
- extensive camera systems (processing biometric data);
- telemarketing (in cooperation with the Czech Telecommunications Office);
- large (major) processors of personal data;
- bailiffs;
- Police information systems
- use of social networks by ministries

Furthermore, in its monitoring activities, the Office will deal with received complaints or suggestions.

Recommendation of European Data Protection Board 1/2022

During its plenary session in November, the European Data Protection Board („EDPB“) Recommendation 1/2022 on requests for approval and on the elements and principles that form part of a controller's Binding Corporate Rules ("**BCR**") under Article 47 of the GDPR. The public consultation on these recommendations ended on 10 January 2023.

It is common for multinational business groups to have frequent transfers of personal data between the companies in the group, which are often based in different countries around the world. However, the fact that transfers happen internally, as within the same group, does not by itself mean that these transfers are not regulated by the general rules on transfers of personal data to third countries outside the EU. So, a company must always have one of the legal bases under Article 45 (adequate level of protection), Article 46 (appropriate safeguards), Article 47 (binding corporate rules) or Article 49 of the GDPR (exceptions for specific situations) when making a transfer.

If there is no decision on adequacy of protection under Article 45 of the GDPR in relation to a country or international organisation, the controller or processor may also transfer personal data to that country or international organisation on the basis of appropriate safeguards under Article 46 of the GDPR if specific requirements are met. One of these appropriate safeguards is the **binding corporate rules** further regulated by Article 47 of the GDPR. These rules are subject to the approval of the supervisory authority, but once they are approved, **personal data can be transferred to third countries on the basis of these rules, in principle without restriction.**

The EDPB Recommendation therefore aims to provide a standard form for controllers to apply for approval of a BCR, to clarify the necessary content of a BCR provided for in Article 47 GDPR, to distinguish between what a BCR must contain and what must be submitted to the lead supervisory authority in the application for approval of a BCR, and to provide clarification and comments on the requirements. These Recommendations also revoke and replace document WP256 rev.01 and document WP264, essentially following them.

A second set of BCR Recommendations for processors is currently under development.

Judgment of the Court of Justice of the European Union in the case of Google - right to be erased

The Court of Justice of the European Union ("CJEU") addressed an important interpretation of Article 17 of the General Data Protection Regulation ("GDPR"), the right to erasure ("right to be forgotten"), in a dispute over the revocation of an allegedly

inaccurate search engine link in the case of Google C-460/20.

Two senior executives of a group of investment companies asked Google to deindex, i.e. remove links from search results made by entering their names into the search engine. The search results contained links to articles that were critical of the group's investment model. The investors claimed that the articles contained false claims and that the articles were accompanied by thumbnail photographs ("thumbnails") showing the management partners in luxury cars, helicopters and airplanes.

Google refused to comply with these requests, referring to the professional context of the articles and photographs and arguing that they did not know whether the information contained in the articles was correct or incorrect.

The German Federal Court of Justice, to which the case was referred, asked the CJEU to interpret Article 17 of the GDPR containing the right to erasure. In the proceedings, the CJEU found that if **the applicant for removal of a link provides relevant and sufficient evidence to support his request and to demonstrate the manifest inaccuracy of the information contained in the linked content, the search engine provider is obliged to comply with the request.** This applies even more if the applicant produces a court decision stating the above. On the other hand, where **the inaccuracy of the information** contained in the linked content **does not appear to be obvious in the light of the evidence provided by the applicant**, the search provider **is not obliged to comply with such a request without such a court decision.** However, in such a case, the applicant must be able to apply to the supervisory authority or a judicial authority to carry out the necessary verifications of accuracy and to order the provider to take the necessary precautions. Furthermore, the Court requires the search engine provider to notify the internet user of the existence of administrative or judicial proceedings concerning the alleged inaccuracy of the content, if it has been informed of such proceedings.

With regard to the display of photographs in the form of thumbnails, the CJEU has pointed out that **the display of photographs** of the person concerned in miniature format as a result of a search made by entering a person's name is of such a nature that it may represent a particularly **significant interference with the privacy and personal data protection rights of that person.** Therefore, the search provider in question must **verify if the display of such photographs is necessary for the exercise of the right to information** of Internet users who are potentially interested in accessing those photographs. In this context, the contribution to a discussion in the general interest is a fundamental factor to be taken into account when balancing conflicting fundamental rights. The CJEU has thus recalled that the right to data protection is not an absolute right, but must be considered in relation to its function in society and must be balanced with other fundamental rights, in accordance with the principle of proportionality. The GDPR expressly states that the right to erasure is excluded if the processing is necessary, among other things, to exercise the right to information. The Court of Justice has found that in balancing the rights and interests relating to photographs displayed in thumbnail form, their informative value must be taken into account without taking into account the context of their publication on the website from which they are exempted. However, any textual elements which are directly attached to the display of photographs in search results and which are capable of explaining the informational value of those photographs must be taken into account.

Preliminary question to the CJEU - application čTečka

The Supreme Administrative Court of the Czech Republic ("SAC CR"), by resolution 8 Ao 7/2022-71 of 12 October 2022, suspended the proceedings on a motion to annul one of the Ministry of Health's extraordinary provisions concerning the restriction of the operation of services, issued to protect the population from the further spread of the covid-19 disease (ref. MZDR 14601/2021-34/MIN/KAN).

The extraordinary provision established the obligation for customers (spectators, participants) to prove that they comply with the infection-free conditions and the obligation for operators (organisers) to check compliance with these conditions via the "čTečka" application. If the customer did not prove compliance with the conditions of infection-free status, the operator was prohibited from providing the service to the customer, allowing the customer to

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enter the area or the event, or allowing the customer to participate in the group tour or the event.

By its judgment, the SAC CR referred to the CJEU a preliminary question relating to the processing of personal data - namely

whether the validation of vaccination, test and recovery certificates in relation to the covid-19 disease by the national „čTečka" application results in automated processing of personal data in the meaning of Art. 4, indent 2 of the GDPR, and thus the material scope of the GDPR under Article 2(1) of the GDPR is determined,

whereas the SAC CR has no doubt that the data contained in the certificates, i.e. name, surname, date of birth and information on vaccination, recovered disease or negative test, constitute personal data within the meaning of Article 4, indent 1) of the GDPR.

In its analysis of the preliminary question, the SAC CR addresses four situations where it considers that personal data may have been processed in connection with the čTečka application:

- by scanning the QR code with the "čTečka" application and converting the information contained therein into a human-readable form;
- the moment when the person checking the infection-free conditions looks at the personal data displayed on the mobile phone;
- the verification of the validity of the certificate by the "čTečka" application;
- by a combination of the above processes, i.e. converting the personal data from the QR code into a human-readable form and projecting it on the mobile phone, inspecting them by the checking person and evaluating the validity of the certificate by comparing the personal health data with the validation rules.

By further analysis in the resolution in question and by referring to the case law of the CJEU on digital certificates, the SCC concludes that the checking of the infection-free conditions of the so called "čTečka" app results in the processing of personal data within the meaning of Article 4 indent 2) of the GDPR and that this preliminary question is furthermore relevant in general for **the definition of the scope of the GDPR and the definition of the processing of personal data** by the CJEU.

There is a presumption that, thanks to the preliminary ruling procedure in Case C-659/22 and the judicial guidance contained in the expected CJEU decision, it will be possible to assess **which technical operations with personal data still fall under the scope of the term processing of personal data and which do not.**

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