

# Legal Update

from the field of



January – February 2024

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## Office Inspection plan for 2024

The Office for Personal Data Protection ("OPPD", "the Office") has published its inspection plan for 2024. The OPPD will focus its inspection activities in 2024 on, among other things:

- ▶ the use of data from the population register by public authorities,
- ▶ the recording of telephone calls,
- ▶ processing of personal data in information systems within the Schengen area,
- ▶ the processing of personal data by the Police of the Czech Republic and
- ▶ the sending of unsolicited commercial communications.

With regard to the recording of telephone calls, the Authority will examine the practices associated with the recording, including their link to the provision of services where consent to such processing of personal data is required. It will also look at how these recordings are further processed, in particular the legitimacy of the purposes and legal basis, the information of data subjects and the retention period of personal data. In the first stage, questionnaires will be sent to the selected subjects.

The Office checks the sending of unsolicited commercial communications on a regular basis. Now the Office will focus on delivery service operators and compliance with the conditions resulting from Section 7 of Act No. 480/2004 Coll. The Office will specifically examine the sending of commercial communications by e-mail and SMS, in particular the legal title to the distributions pursuant to Section 7(2) or (3) of the Act, and other conditions (identification of the commercial communication and the sender, the possibility to unsubscribe, etc.). The Office will select at least three entities from this sector (taking into account the complaints received)

that use the sending of commercial communications by e-mail, SMS or mobile applications for their marketing activities.

At the same time, in mid-March, the OIO will join with other EU supervisory authorities in a Coordinated Enforcement Framework (CEF) 2024 on the implementation of the right of access by data controllers (see below).

## OPPD Methodology on camera systems

Following a public consultation, which we reported on [here](#), the ÚOOÚ has issued a new [Methodology for the design and operation of CCTV systems in terms of processing and protection of personal data](#) (the Methodology).

The aim of the Office is to ensure better orientation of personal data controllers and processors, including suppliers of CCTV systems, in the obligations that must be complied with under the GDPR.

The Methodology applies to camera systems with recording (including photo traps) as well as online camera systems, which are also subject to obligations regarding the processing of personal data.

The Methodology is not a legally binding document and therefore it remains the duty of personal data controllers to always comply with the GDPR and [EDPB Guideline No.3/2019](#), and according to the Authority, the correct application of the Methodology should ensure compliance with both the GDPR and the EDPB Guideline.

The Methodology contains a classification of CCTV systems into four classes according to the degree of violation of the rights and interests of data subjects, with an overview of technical and organisational measures applicable in each class, with the proviso that if the controller chooses the system described in the Methodology, i.e. the inclusion of the CCTV

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system in the relevant class, then the proposed system of technical and organisational measures must be applied as a whole.

The Methodology also contains models:

- ▶ information on the processing of personal data pursuant to Articles 13 and 14 GDPR;
- ▶ records of processing activities;
- ▶ the processing of the balancing test.

The Methodology does not address CCTV surveillance which is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or processing necessary for compliance with a legal obligation to which the controller is subject.

## CEF 2024 Joint Monitoring Action

In the course of 2024, the Authority will participate in the European Data Protection Board's ("EDPB") CEF 2024 joint coordinated action. 31 data protection authorities, including 7 German data protection authorities, will participate at the level of the entire European Economic Area ("EEA"). The joint supervisory action focuses on the implementation of the data subject's right of access to information on the processing of his or her personal data.

The right of access, as defined by the GDPR, is a key tool for the data subject and ensures transparency in the processing of personal data. This mechanism allows data subjects to verify whether and how their personal data are processed in accordance with the law and to exercise other data protection rights, such as the right to rectification or erasure.

The data subject's right of access includes, but is not limited to:

- ▶ obtaining confirmation from the controller as to whether or not his or her personal data are being processed,

- ▶ obtaining access to that personal data,
- ▶ information about the purposes of the processing,
- ▶ information on the categories of personal data concerned,
- ▶ information on the recipient or categories of recipients who may have access to the personal data,
- ▶ information on the intended duration for which the personal data will be stored,
- ▶ information on the existence of a right to rectification, erasure or restriction of processing,
- ▶ information on the right to lodge a complaint with a supervisory authority,
- ▶ information on the source of the personal data.

As regards the transfer of personal data to a third country or an international organisation, the data subject has the right to be informed of appropriate safeguards.

As regards the provision of copies of personal data, the controller must provide a copy of the personal data processed, while the right to a copy must not adversely affect the rights and freedoms of other persons. It may charge a reasonable fee for additional copies based on administrative costs.

For a full list of information related to the right of access to information under the GDPR, see Articles 13, 14 and 15.

## EDPB launches tool to check websites and cookies

The European Data Protection Board ("EDPB") has launched a new website audit tool that allows for a simple analysis of compliance with legal requirements, in particular as regards the processing of cookies. This free and open source software is available for legal and technical auditors at data protection authorities, as well as for controllers and processors who want to check the compliance of their

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websites with the obligations set out in the legislation. The tool is easy to use directly on the website and is compatible with other audit tools. A second version with new features is also planned for release later this year. This initiative is part of the EDPB's 2021-2023 strategy to strengthen the capacity of data protection authorities by developing common tools and providing access to expert know-how.

## EDPB on the concept of principal establishment

During its last plenary session, the [EDPB](#) adopted an [opinion on the concept of a central establishment and on the criteria for the application of the one-stop shop mechanism](#) in accordance with Article 64(2) of the GDPR. The opinion, issued following a request from the French supervisory authority, clarifies the *notion of a controller's main establishment in the EU* under Article 4(16) of the GDPR, in particular in cases where processing decisions are taken outside the EU.

In its opinion, the EDPB considers that a controller's *place of central administration* in the EU can only be considered a main establishment under Article 4(16)(a) GDPR if it takes decisions on the purposes and means of processing personal data and if it has the power to have such decisions implemented. The EDPB further explains that the one – stop - shop mechanism can only be applied where there is evidence that one of the controller's establishments in the Union takes decisions on the purposes and means of the relevant processing operations and has the power to have those decisions implemented. This means that when decisions on the purposes and means of processing are taken outside the EU, there should be no main establishment of the controller in the EU and therefore the single point of contact should not apply.

This Opinion is the latest in a series of concrete measures taken by the EDPB following its Vienna Declaration on cross-border enforcement, which aims to streamline enforcement and cooperation between data protection authorities.

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, s.r.o. 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 may prevail in the future.

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