

Legal Update

in the field of



Spring 2023

Weinhold Legal

Methodology of the Office for Personal Data Protection on cameras

The Office for Personal Data Protection has published for public consultation a draft Methodology on CCTV systems in terms of processing and protection of personal data. The aim of the Methodology is to ensure better orientation of controllers and processors of personal data, as well as suppliers of CCTV systems, in the obligations concerning the design, establishment and operation of CCTV systems. The methodology foresees the introduction of a classification of CCTV systems into four classes according to security.

The methodology also contains examples:

- ▶ minimum technical and organizational measures;
- ▶ information on the processing of personal data pursuant to Articles 13 and 14 of the GDPR;
- ▶ records of processing activities;
- ▶ processing the balance test

The Methodology is a recommendation and will not be legally binding even if approved. Its main purpose is to ensure clarity, repeatability and completeness of compliance with the obligations under the GDPR and the European Data Protection Board ("EDPB") Guidance No. 3/2019 on the processing of personal data by video technology. The Methodology should facilitate the position of small data controllers of personal data, especially in cases of common video surveillance systems. The deadline for sending comments on the Methodology is 9 June 2023.

EDPB Guide to the GDPR for Small Businesses

The EDPB has published a Data Protection Guide for Small Businesses to help small business owners comply with data protection. The guide aims to raise awareness of the GDPR and provide small businesses with practical information on GDPR compliance in an accessible and easy-to-understand format. The guide is currently only available in English, but will eventually be made available in other EU languages.

EDPB guidelines on the right of access

During its April plenary session, the EDPB adopted the Guidelines 01/2022 on data subjects' rights of access under Article 15 of the GDPR following a public consultation. The right of

access comprises three different components:

- ▶ confirmation of whether or not data about the person concerned are processed,
- ▶ access to this personal data and
- ▶ access to information about the processing, such as purpose, category data and recipients, processing time, rights data subjects and additional measures in case of transfer personal data to countries outside the EU/EEA.

The essence of the right of access is that it helps data subjects to assess the processing of their personal data by the controller and to decide whether it is necessary to request, for example, the erasure or rectification of personal data.

The purpose of the guidelines is to analyze the different aspects of the right of access and to provide more precise guidance on how this right should be applied in different situations. For example, the scope of the right of access, the information that the controller must provide to data subjects, the form of the right of access, the main ways of providing access, etc. are clarified. The guidelines also include an explanation of the concepts of 'manifest lack of justification' or 'disproportionality' within the meaning of Article 12(5) GDPR, where in the context of such requests for the right of access, the controller is given the possibility to impose a reasonable fee taking into account the administrative costs or to refuse to comply with the request.

EDBP guidance on reporting security breaches

At its March meeting, the EDPB adopted, following a public consultation, the 09/2022 Guidelines on reporting personal data breaches to the supervisory authority under Articles 33 and 34 of the GDPR. The guidelines update point 73 and the related text in Annex VII, clarifying that the one-stop-shop mechanism does not apply where a data breach occurs in relation to the establishment of a non-EU controller with an appointed representative in an EU Member State pursuant to Article 27 GDPR. That controller is thus obliged to report the breach to any supervisory authority of the EU Member State in which in which they operate or in which they are located the data subjects concerned.

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NSS CR on commercial communications

The Supreme Administrative Court of the Czech Republic (the "SAC CR") confirmed the position of the OCCP on the liability for dissemination of commercial communications in its judgment No. 6 As 18/2022 - 43 of 16 March 2023, when it finally confirmed the sanction of CZK 1.4 million. CZK of the disseminator in whose favor the commercial communications were sent. In the case under review, the communications were sent without the consent of the addressees, they did not contain the identity of the sender, in violation of the Act on Certain Information Society Services (Act No. 480/2004 Coll., as in force until 30 June 2017), nor did they contain information on the addressee's ability to unsubscribe from the mailing. The Supreme Administrative Court of the Czech Republic stated that the responsibility for the dissemination of commercial communications lies not only with the sender but also with the one who initiated the mailing for their own benefit, whether by ordering a service, placing an order or other instruction, including through the use of affiliates (business partners who direct customers to the advertiser's website and receive a commission for the conversion - the purchase made) or through other co-working tools. In its complaint, the applicant alleged that the sending of the circulars was a possible excess of its affiliates, since one of them sent the commercial communications without its knowledge or consent. The Czech Supreme Administrative Court noted that liability in this case is strict and the person for whose benefit the commercial communication is disseminated is thus also liable for any possible excesses of the senders. According to the facts, it was clear that the offending act was done for the benefit of the applicant and was thus imputable to her.

In this connection, the Authority therefore recalls that it is necessary for all disseminators of commercial communications, whether they are the principals (subscribers) or the actual disseminators, to verify sufficiently whether the addressees of the commercial communications have given their consent to such dissemination, or, more generally, whether the dissemination of the commercial communications takes place in a lawful manner. In brief, the legal requirements for sending commercial communications can be summarized as follows:

- ▶ If it is an existing customer or the addressee has given prior consent, there must be an option to refuse consent at the time of contact;

- ▶ The mailing must be clearly marked as a commercial communication;
- ▶ the person for whose benefit it is sent must be identified;
- ▶ there is an easy option to unsubscribe from the mailing list.

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For further information, please contact the partner / manager you are usually connected to.



Martin Lukáš
Partner
Martin.Lukas@weinholdlegal.com



Tereza Hošková
Managing Attorney
Tereza.Hoskova@weinholdlegal.com



Daša Aradská
Attorney
Dasa.Aradska@weinholdlegal.com