

Legal Update

from the field of



Summer 2023

Weinhold Legal

EDPB on EU-US Privacy Shield Framework

At its last plenary meeting, the European Data Protection Board ("EDPB") [adopted an information notice](#) for natural and legal persons transferring personal data to the US under the new Data Privacy Framework ("DPF"). The purpose of this notice is to provide brief information in the form of FAQs on the application of the [EU-US Co-Mission adequacy decision](#) (the "adequacy decision"), which we reported on here.

ÚOOÚ imposed fines for cookies

The Office for Personal Data Protection ("OPPD", "the Office") has [published](#) information that since the beginning of this year it has imposed fines totalling CZK 4,443,000 on various website operators for breaches of the GDPR in connection with the processing of personal data through cookies, of which fines totalling CZK 1,640,000 have become final.

After bringing the Czech regulation of cookies into line with the European regulation, namely with the entry into force of the amendment to the Electronic Communications Act on 1 January 2022 ("ECA"), the OCC did not fine website operators during the transitional period, but tried to educate them and only warned and reproached them in writing for shortcomings. However, from 2023 onwards, the ÚOOÚ proceeded to impose fines because, according to the ÚOOÚ, operators had sufficient space and time after the ZEK came into force to bring the processing of personal data through cookies into compliance with the GDPR. Integer tempor.

According to the ÚOOÚ [press release](#), among the most frequent or most important violations of the GDPR identified by the ÚOOÚ are:

- ▶ uploading cookies to the devices of website visitors without their consent (this does not apply in the case of so-called technical cookies pursuant to Section 89(3) of the Act);
- ▶ lack of consent to the processing of personal data (e.g. in terms of sufficient information to users);
- ▶ insufficient fulfilment of the information obligation (insufficient classification of individual cookies or information available only in English);
- ▶ the impossibility (or significant difficulty) of withdrawing consent to the processing of personal data via cookies;

- ▶ the placement of options for "consent" and "non-consent" to the processing of personal data by means of cookies in different layers within the cookie trays, which the visitor is influenced to consent to (so-called DDP - Deceptive Design Patterns);
- ▶ The cookie bar either does not respond or does not respond sufficiently to the individually selected settings for the processing of personal data via cookies.

CJEU on the right of access under Article 15 GDPR

On 22 June 2023, the Court of Justice of the European Union (CJEU) issued its decision in Case C-579/21 Pankki S, in which it addressed the interpretation of the right of access to personal data under Article 15 of the GDPR.

In 2014, an employee and customer of Pankki S. learned that other employees of the same bank had accessed his personal data several times between 1 November 2013 and 31 December 2013. Since that employee, who had since been dismissed from his employment at Pankki S, had doubts about the lawfulness of those accesses to his personal data, he asked the bank on 29 August 2018 to provide him with the identity of the persons who had accessed his personal data, the exact dates on which the accesses had taken place and the purposes for which those personal data were processed. Pankki S refused to disclose the identities of the employees who carried out the operations of processing his personal data on the grounds that this information constituted personal data of those employees. It did, however, provide an explanation concerning those instances of access to the applicant's personal data by its internal audit department. The reason given was that the bank client for whom the applicant was a consultant was a creditor of a person with the same surname as the applicant. The bank therefore wished to check whether the applicant and the borrower were one and the same person and whether there might be an impermissible conflict of interest. The bank stated that the answer to this question required the processing of the applicant's personal data, and that each bank employee who processed the data submitted a statement to the Internal Audit Department on the reasons for the processing. Despite this explanation, the applicant requested the Finnish Data Protection Authority to order Pankki S to provide the requested information. Following the refusal of that request, the applicant brought an action before the Finnish Administrative Court. That court

Legal Update

from the field of



Summer 2023

Weinhold Legal

subsequently referred the matter to the CJEU for a preliminary ruling on Article 15 of the GDPR.

Furthermore, the CJEU concluded in the proceedings that the **information relating to access to personal data** (in the specific case, this information was contained in the daily logs generated by the controller's system, the so-called log data) *concerning*:

- ▶ data and the purposes of these operations **constitute information** which the person concerned has the right to obtain from the controller,
- ▶ the identity of the employees who carried out those processing operations on the instructions of the controller **does not constitute information which that person is entitled to obtain from the controller**. The exception is where this information is necessary for the data subject to effectively exercise the rights conferred by the GDPR and provided that the rights and freedoms of those employees are respected.

The CJEU held that the controller's employees cannot be considered "recipients" of personal data within the meaning of Article 15(1)(c) of the GDPR if they process personal data pursuant to and in accordance with the controller's instructions.

EDPB Guidelines on the calculation of administrative fines

Following a public consultation, the EDPB has adopted [Guidelines 04/2022](#) on the calculation of administrative fines under Article 83 GDPR with the aim of harmonising the methodology used by supervisory authorities when calculating the amount of the fine. These Guidelines complement the previously adopted Guidelines on the application and setting of administrative fines under the GDPR ([WP253](#)), which focus on the circumstances in which a fine may be imposed. The updated guidelines consist of five parts:

- ▶ identification of the processing operations in the case;
- ▶ evaluating the classification of the infringement, assessing the gravity of the infringement in the light of the circumstances of the case and assessing the turnover of the undertaking;
- ▶ evaluation of the aggravating and mitigating circumstances relating to the past or present conduct of the controller/processor and, in consequence, an increase or reduction of the fine;

- ▶ determination of the relevant statutory maximum fines for each infringement;
- ▶ assessing whether the final amount of the fine calculated meets the requirements of effectiveness, proportionality and deterrence. The fine may still be adjusted accordingly, but may not exceed the relevant legal maximum.



© 2023 Weinhold Legal
All rights reserved.

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 you may prevail in the future.

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