

# Legal Update

from the field of



Summer 2022

Weinhold Legal

## ÚOOÚ on cookies

The Office for Personal Data Protection (ÚOOÚ, the Office) as part of its official activities [monitored compliance with the cookie obligations](#) (after the introduction of the opt-in principle from 1 January, 2022) in relation to the cookie processing settings of various operators of web portals and websites. In the first half of the year, the Office gave operators time to adapt to the new legislation. However, it is now monitoring compliance on its own initiative and is approaching administrators who are in breach of the legislation in this area to seek redress. If this is not done, the ÚOOÚ will proceed with sanctions, primarily of a financial nature.

The main deficiencies identified by the audits of the ÚOOÚ include:

- ▶ use of non-technical cookies without consent,
- ▶ the disproportionate duration of cookies in relation to their purpose,
- ▶ the absence of an opt-out option in the first layer of the cookie bar,
- ▶ poor categorization of cookies,
- ▶ absence of information on the specific cookies used,
- ▶ difference in the visibility of the buttons for consent and declination to the use of non-technical cookies,
- ▶ incorrect classification of cookies,
- ▶ information about cookies in a foreign language,
- ▶ the cookie bar makes it difficult or impossible to read the website.

The Office has previously set up an advice section on its website to answer [Frequently asked questions about cookie consent via the cookie bar](#). The section on the retention of consent to the storage of cookies has now been updated. The ÚOOÚ states that the period of time for which consent to the processing of cookies (or personal data processed through cookies) is valid must be determined by the controller in relation to the purpose for which the cookies (personal data) are processed. This also applies to the re-display of the cookie bar after a previous refusal to grant consent. The period for the re-display of the cookie bar is to be determined by the controller in the light of the expectations of the data subjects. In general, in the opinion of the Office, 12 months can be considered a reasonable period for which consent to the use of cookies has been granted. If the user has refused to give consent, consent should not be required again for at least 6

months from the last time the cookie bar was viewed. This period may be shorter if:

- ▶ one or more of the processing circumstances have changed significantly,
- ▶ the operator is not able to monitor the previous consent/refusal, e.g. the user has deleted the cookies stored on his/her device.

The General Data Protection Regulation ("GDPR") does not provide for any limitation of the period of processing of personal data on the basis of the consent given, provided that the purpose of the processing continues and the data subject has not withdrawn his or her consent.

It is therefore unclear on what the ÚOOÚ relies for its recommendation.

## Guidelines EDPB 07/2022

The European Data Protection Board ("EDPB") [Guidelines 07/2022](#) on **certification as a tool for transfers of personal data** to third countries or international organizations under Chapter V of the GDPR are subject to public consultation until 30 September 2022. These guidelines complement the earlier [Guidelines 1/2018](#) on certification and identifying certification criteria in accordance with Articles 42 and 43 of the GDPR. The approved mechanisms for certification under Article 46(2)(f) of the GDPR have not yet been used in practice.

Article 46 of the GDPR requires exporters of personal data to put in place appropriate safeguards for the purposes of transferring personal data to third countries. The GDPR diversifies through these guidelines (and the previously issued Guidelines 4/2021 on Codes of Conduct under Article 42(2)(e) of the GDPR) the appropriate safeguards that data exporters may use under Article 46 of the GDPR in response to the Schrems II decision for lawful transfers of personal data outside the EU/EEA. Obtaining certification is a voluntary procedure to help demonstrate compliance with the GDPR.

The guidelines provide guidance, focusing on the role of the importer of personal data, to whom the certificate may be issued, and the exporter of the data, who will then use it as a tool to demonstrate that the transfer is based on appropriate safeguards to ensure that the level of protection of personal data is respected as it is in the EU/EEA. The responsibility for compliance with the

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obligations regarding the processing of personal data remains with the data exporter. The exporter of personal data has the obligation to verify that the data importer's certification:

- ▶ is valid,
- ▶ relates to the specific transfer of personal data to be carried out, and
- ▶ covers onward transfers and there is appropriate contractual documentation for those transfers.

In addition, the exporter must further verify that there is a legally binding document, e.g. a contract, between the certifying authority and the importer of the data.

The guidelines explain what is needed to establish mechanisms for issuing certificates. They also aim to assist supervisory authorities in reviewing and evaluating certification criteria.

These criteria include:

- ▶ assessment of third country legislation,
- ▶ the general obligations of exporters and importers,
- ▶ rules for onward transmission of data,
- ▶ defense and enforcement options,
- ▶ measures for situations in which the national law of a third country prevents compliance with the obligations undertaken as part of the certificate issued, in particular with regard to requests for access to personal data by third country authorities.

## Unauthorised collection

[The Office imposed a fine of CZK 975,000 on the Ministry of the Interior of the Czech Republic](#), in connection with the Karanténa application and the collection of personal data on persons in isolation by the Police of the Czech Republic („PČR“). Since the PČR has no legal personality, the fine was imposed on the Ministry of the Interior of the Czech Republic on the basis of the Personal Data Processing Act.

The object of the offence of the PČR was the unauthorized processing of data on the health status of persons ordered to be isolated. This conduct violated Section 79(3) of the Police Act, according to which:

*"Data on racial or ethnic origin, religious, philosophical or political beliefs, trade union membership, health status, sexual behavior or sexual orientation may be collected only if it is*

*necessary for the purposes of investigating a specific crime or offence or for providing protection to persons."*

However, the PČR processed personal data on a blanket basis, i.e., on all persons in isolation, in violation of this provision.

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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