

Legal update

October 2017

Weinhold Legal

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The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

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Bills under discussion

Draft Law on the Processing of Personal Data

On 18 August 2017, the Ministry of the Interior published a long expected draft law on the processing of personal data designed to fully replace the current Act No. 101/2000 Coll. on the protection of personal data.

The primary objective of the draft law is to assure domestic legislation complies with Regulation of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/ES (General Data Protection Regulation Act) ("GDPR"). The draft law also partially implements the European Parliament Directive and of the Council (EU) 2016/680 of 27 April 2016 on the protection of the personal data of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and on the repealing of Council Framework Decision 2008/977/SVV (the "Directive").

The draft law is relatively narrowly focused and does not take full advantage of the latitude afforded Member States in their national legislation. The most important changes envisaged in the draft law are:

- The draft law sets a minimum age of consent of 13 years old for the processing of one's personal data without the consent of a legal guardian (compared to the GDPR stipulated age of 16).
- The draft law newly considers a body founded by statute or on the basis of public law, which performs statutorily defined tasks in the public interest, to be a public entity. In compliance with the proposed definition, associations [chambers] such as the Czech Bar Association and Czech Medical Association, the Czech National Bank, the Supreme Audit Office, the Material Reserves Administration or the Ombudsman, among others, would be considered public entities in the future.
- The proposed legal duty of confidentiality of a personal data protection officer does not apply only to the officer, but also to subordinates involved in the execution of his tasks; such duty of confidentiality should continue after the officer's term ends. Confidentiality does not apply here to an administrator/processor who is only referred to as an officer, a body active in criminal proceedings, a court or an authority either in regard to personal data or to the subject of the data.

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- The draft law extensively regulates the processing of data for journalistic, academic, artistic or literary purposes with the aim of preserving existing freedoms: of the press, of artistic creation and of academic research.
- The draft law establishes a Czech Accreditation Institute, a charitable trust, as the sole accreditation body certifying fulfilment of the requirements of various voluntary seals, stamps or certificates of privacy protection. According to the draft law, the Office for the Protection of Personal Data should apply additional requirements aimed at the protection of personal data in this area.

A part of the draft law deals with the issue of offences, and a ceiling is placed on administrative fines for public law entities that is in line with the existing treatment pursuant to Act No. 101/2000, i.e. CZK 10 million. The proposer of the draft law explained this ceiling as an effort to reconcile the dissuasive and punitive nature of the fine with the fact that the financial resources of the institutions that are usually fined generally come from public budgets. He is of the view that in these cases it makes no sense to set a ceiling in an amount of EUR 20 million, as is the case for business entities under the GDPR.

In contrast to the amount proposed by the Directive, the draft law will reduce the fine imposed for the offence of violating the ban on disclosure of personal data stipulated by other legislation. According to the draft law, a fine of up to CZK 1 million may be imposed, and should the violation occur in print, on film, radio, television and so on, up to CZK 5 million.

A substantial part of the draft law touches on the newly organized Office for the Protection of Personal Data, which will continue to perform the role of primary supervisory authority. However, the amendment does not take up the existing function of inspector, but instead introduces two new vice-presidents of the authority who, in contrast to existing inspectors, will represent the authority's president.

The draft law should enter into force at the same time as the GDPR on 25 May 2018.

Trade Licencing Act Amendment

Act No. 289/2017 Coll., amending Act No. 455/1991 Coll. on small business (the Trade Licencing Act), as amended, was promulgated in the Collection of Laws on 15 September 2017.

Together with the amendment in question, the existing Trade Licencing Act will undergo certain changes that are intended to eliminate unfounded differences between individual groups of business entities, reduce their administrative burden and improve the general public's level of awareness as regards data pertaining to entrepreneurs entered in the Business Register.

With the amendment's adoption, an entrepreneur whose

business authorisation was revoked pursuant to § 58(2) or (3) of the Trade Licencing Act may no longer be excluded from carrying on a trade in a related field or from having the possibility of participating in the operation of a trade in a related field. The amendment also standardises a new 3-year duration of a barrier to operating a trade for all categories of persons to which the barrier to operating a trade set out in § 8(6) of the Trade Licencing Act applies.

The Trade Licencing Act amendment also eliminates the entrepreneur obligation to notify the Trade Licencing Office of the identifying data of members of a statutory body of a corporate entity and heads of branches of a foreign enterprise. For such cases, the amendment stipulates that if data pertaining to the listed persons is already entered in a commercial or other public register, the competent Trade Licencing Office will obtain such data itself.

No less importantly, the amendment introduces the possibility of issuing what are known as bulk files (reports) with up-to-date publicly available data on entrepreneurs entered in the public section of the Business Register. A condition of the issuance of such a report, irrespective of its purpose, will be the application of a person which defines the group of entrepreneurs whose data should be included in the report, the registered office of the entrepreneur, the location of establishments of entrepreneurs or specific trades; in addition to these data the report shall always contain the entrepreneur's basic identifying data.

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