



LEGAL UPDATE



BEATOW PARTNERS

JUNE 2013

New Slovak Data
Protection Legislation

NEW SLOVAK DATA PROTECTION LEGISLATION

In line with a reform of the EU legal framework on the protection of personal data, the Slovak Republic adopted a new legislation on personal data protection, which has been published in the Slovak Collection of Laws consisting of a new act No. 122/2013 ("**New Act**") which will, with effect as of July 1, 2013, fully replace the existing Act No. 428/2002 Coll. on Protection of Personal Data, as amended ("**Former Act**").

Below, please find a brief overview of the basic rules to be introduced by the New Act.

Redefinition of Key Terms

The New Act provides for a more precise definition of certain legal terms and introduces a legal definition of a "subcontractor".

Among other items, the New Act provides for an amended definition of a "*controller*" concept under which a controller shall mean anyone, i.e., any natural or legal person which, individually or jointly with others, determines the purpose, conditions and means of the processing of data and which processes data on its own behalf. In comparison to the Former Act, the New Act replaces the exact identification of persons/entities being in the position of the controller (e.g. state administration authority, self-governing body, other public authority) by referring to "*anyone*".

The new legal definition of a "*subcontractor*" concept is to be applied where the controller and the processor have agreed in writing that the data processing by the processor will be carried out through a third person – the subcontractor. The

processor remains responsible for the data processing and for the subcontractor's compliance with the data processing requirements. The provisions of the New Act applicable to the processor shall also apply to the subcontractor which in the light of the New Act will be regarded by the Office for Personal Data Protection of the Slovak Republic ("**Office**") as being in the position of the processor.

New Requirements for Processor's Authorization

Unlike the Former Act, under the New Act, a written authorization previously granted by the controller to the processor, will not be sufficient for the purposes of data processing. Under the New Act, the processor will be authorized to process the data only on the basis of a written agreement concluded with the controller. The authority of the processor to process the data shall be limited to the extent set forth in the written agreement with the controller. The New Act further introduces mandatory elements of such data processing agreement, which include, among other things, a need to obtain an explicit permission from the controller for the processor to carry out the data processing through the subcontractor.

When choosing a processor, the controller is obliged to take into consideration, particularly professional, technical, organizational and personnel capacity of the processor to ensure that the data processing will meet all the statutory requirements.

In order to ensure effective enforcement of the data protection legislation, the New Act introduces further statutory obligations to be fulfilled by the processor when carrying out the data processing on behalf of the controller. As an example, the

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processor has an obligation to notify the controller in writing of any breach of the New Act committed by the controller and if the controller fails to remedy such breach without undue delay but not later than one month after delivery of the written notice, the processor is obliged to notify the Office thereof.

New Obligations of Controller

Notification to Third Parties. The New Act introduces an obligation of the controller to notify in writing a third party that the controller has provided incorrect, incomplete or out-of-date data or without a legal basis and to further specify measures implemented in order to remedy the situation together with measures to be adopted by such third party; and, upon the controller's notification, the third party is obliged to take the required measures without undue delay.

Instructions to Authorized Person. The controller is newly required to execute a written record of the instructions given to the authorized person, which must contain all the elements set forth in the New Act. In addition, the controller will be obliged to repeatedly instruct the authorized person in cases determined by law, i.e., if there has been a substantial change in his/her work, service or functional position, as a result of which either the content of his/her work activities or the conditions of the data processing or the scope of the processed data have substantially changed.

Data Security. Under the New Act, the controller must include description of implemented appropriate technical, organizational and personnel measures ("**Security Measures**") also in the security directive, if the controller does not process special categories of data in the filing system linked by a publicly accessible computer network or if the controller processes special categories of data in filing system which is not linked by a publicly accessible computer network. The scope of the Security Measures will be established by secondary legislation to be issued by the Office following the New Act.

Representative of Controller. The New

Act imposes an obligation for the controllers domiciled outside the EU member state to designate, before commencement of the data processing, its representative having a registered office or permanently residing in the Slovak Republic. The controller's representative may be requested to evidence its designation to the Office at any time.

Designation of Data Protection Officer

As of July 1, 2013, the controller shall be obliged to designate a data protection officer whenever the controller carries out the processing of personal data through 20 or more authorized persons and notify such data protection officer to the Office. The data protection officer will have to meet the statutory qualification requirements and his/her knowledge of the data protection legislation will be subject to a mandatory examination conducted by the Office free of charge.

Disclosure of Employees' Data

The New Act explicitly authorizes the controller to make available or disclose the data of its employees to the extent permitted by law (including, among the other items, title, first name, surname, place of work, telephone number, electronic mail to the workplace, employer's identification data), without obtaining employee's consent.

Registration Fees

Services to be provided by the Office with respect to registration of the filing systems or registration of any changes thereto, will be subject to administrative fees of EUR 20 and EUR 50.

Cross-border Flow

Certain changes will be introduced to the terms and conditions of the data transfer to the third countries. The data transfer to the third country not providing for an adequate level of protection may take place without any further authorization only under the condition that the controller adopts reasonable guarantees of protection of privacy and of fundamental rights and freedoms of the data subjects by

employing (i) standard data protection clauses adopted by the Commission or (ii) binding corporate rules of the controller approved by the Office. As a result of this, the administrative burden connected with applying for the Office's approval of the cross-border flow of personal data to the third countries is expected to be reduced.

The New Act introduces statutory requirements on the data transfer contracts applicable in situations, when the controller or the processor having a registered office, place of business or permanently residing in the United States of America has acceded to the Safe Harbour Privacy Principles.

Penalties

The New Act modifies the mechanism of imposing fines. Previously, there was a room left for the discretion of the Office to decide on imposing a fine. As of July 1, 2013, if a breach occurs, the Office shall always be obliged to impose a fine (maximum amount of such fine can go up to EUR 300,000).

Data Protection Proceedings

The New Act contains rules designed to ensure protection against infringements of the individuals' rights with regard to the processing of their data and introduces a new type of proceedings on the protection of the data, which proceedings may be brought before the Office and a purpose of which is to determine whether an infringement of the rights of individuals with regard to the processing of his/her personal data occurred and to impose remedy measures or sanctions.

Compliance

The controllers, processors and subcontractors are all required to bring their status and relationships in compliance with the New Act.

Contractual Relationships between Controller and Processor. All contractual relationships between the controller and the processor shall be brought into compliance with the New Act within one

year following the New Act coming into effect.

Instructions to Authorized Person. All obligations imposed under the New Act in relation to instructions given to the authorized persons shall be fulfilled not later than six months after the New Act comes into effect.

Designation of Data Protection Officer. The appointment of the data protection officer and the subsequent notification to the Office has to be made within one year after the New Act comes into effect.

Registration of Filing Systems. The re-registration of the filing systems required under the New Act has to be performed no later than six months after the New Act comes into effect.

Harmonizing Security Measures. The New Act requires the Security Measures adopted pursuant to the Former Act to be updated to comply with the New Act within nine months following the New Act coming into effect.

For more information on the topic discussed in this issue of the BEATOW PARTNERS Legal Update, please contact us at info@beatow.com.

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