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→ Law

Personal data protection – practical experience

The Regulation on Personal Data Protection has been effective for a few months already. It applies to a large number of entities not only on part of controllers of information systems, but in particular on part of data subjects. This fact is reflected in the number of opinions and ambiguities connected with the interpretation or a not quite correct understanding of the Regulation.

Among the most frequent misunderstandings we have encountered since the effective date of GDPR the following have to be mentioned.

When implementing requirements of GDPR the basic principles of personal data protection are often misunderstood. It is in particular the fact that personal data may be processed only on legal bases listed by the Regulation. The said legal bases include i. a. the contract, law or consent of the data subject to the processing of personal data. Subsequently, it is however necessary to point out in this respect that the consent to processing of personal data granted by the data subject is not the only legal basis. On the contrary, it is one of many and it should be applied only if the application of another legal basis is not justified. A typical example is the consent to the processing of personal data, granting of which an employer requires from an employee. This course of action is not correct, as the majority of personal data are processed by an employer to fulfil his duties under an employment agreement or stipulated by law. Thus granting of consent is not necessary.

Controllers (e.g. employers) often request consent to the processing of personal data *„as a precaution"*. However, we do not consider such procedure to be the best solution, as it introduces ambiguity and lack of transparency to the relations with the data subjects (holders of personal data) as the consent to the processing of personal data may be withdrawn anytime. If the data subject withdraws its consent on the presumption that after withdrawing its data will not be processed anymore, in our opinion, the requirements of GDPR have not been implemented correctly. In addition, the instructions – so called duties to notify in relation to the data subjects are often incomplete. Though the data subject is informed on the possibility to withdraw the consent to the processing of personal data and on the manner, how to do it, it is only rarely informed about the fact, that the withdrawal of the consent does not affect the processing of its personal data before such withdrawal. This leads to many misunderstanding which can be often avoided by more precise communication.

Applicable social security system when performing work outside of the SR

We would like to point out to an interesting and important topic, which often remains ignored - the determination of the applicable social security system of a respective EU Member State, if the employee is posted to perform services within EU or regularly performs services in two or more Member States.

The issue of applicable legislation for the field of social security is regulated on the European level by the Regulation (EC) No. 883/2004 of the European Parliament and of the Council on the coordination of social security systems.

The Regulation has introduced basic principles of stipulating applicable legislation for the application of a competent social security system. In spite of the fact that the regulation has been valid for a longer period of time, its application is often accompanied by requirements, which do not correspond with such basic principles.

With respect to the aforementioned, it is necessary to emphasize that an employee is subject to the legislation of the country, in which he/she carries out the job. Only in cases stipulated by the Regulation the employee will be subject to the law of another Member State. Such exceptions are the posting of an employee to provide services in another Member State on behalf of the employer and to provide services in two or more Member States. In case of both exceptions conditions are stipulated, which shall be considered when determining the applicable law.

Not less important is the correct interpretation of individual terms used when determining the applicable legislation and differentiating e.g. the legal regulation of posting in terms of social security and in terms of employment law.

The risk of not complying with the conditions stipulated in the Regulation does not consist in the threat of current sanctions on part of

competent institutions but in particular in the threat of possible complications when asserting claims from the system of social security, which can show after several years.

Contact for more information

Zuzana Bzdúšková
T +421 257 200 411
zuzana.bzduskova@roedl.com

→ Economy

Completeness of the accounting

Lately, more and more companies require a review of the Financial Statements to be performed as soon as possible after the end of the accounting period. This is mostly based on the owner´s requirement directed to the accounting unit to prepare the Financial Statements as soon as possible in order to have information necessary for the preparation of the consolidated Financial Statements of the whole group at its disposal in due time. The most important thing for the accounting unit in connection with this fact is for it to be able to meet the provisions of the Act on Accounting regarding the preparation of the Financial Statements, mainly for the Financial Statements to provide a true and fair presentation of facts being the subject-matter of the accounting and of the financial situation of the accounting unit (Sec 7 par. 1 of the Act on Accounting).

Sec 8 par. 1 of the Act on Accounting states also important requirements on the accounting, i.e. that the accounting unit is obliged to keep the accounting correctly, completely, demonstrably, comprehensibly and in a way, that ensures the durability of accounting records. The practice has shown that one of the most important and at the same time most difficult requirements is the completeness of the accounting.

The completeness of the accounting is defined in more detail in Sec § 8 par. 3 of the Act on Accounting and is secured, if:

- all accounting items in terms of Sec. 3 in an accounting period are recorded in the books of accounts,
- the individual Financial Statements or also consolidated Financial Statements have been prepared,
- an Annual report or a consolidated Annual report, if the accounting unit is obliged to do so, has been prepared,
- the accounting unit has published data in terms of Sec 23d and deposited documents in terms of Sec 23a,
- the accounting unit has accounting records on all of these facts.

Most difficult for the accounting unit is to ensure directly the first regulation regarding the booking of all accounting items in the books of accounts for the respective accounting period. This can be ensured at the end of the accounting period mainly by means of provisions and unbilled deliveries, if we do not have all necessary accounting documents at our disposal in due time. However, it is difficult to obtain all necessary information for the assurance of the completeness of the accounting and the general rule is: the bigger the accounting unit, the more information is to be obtained. Even more problematic is the case of an accounting unit with more affiliated branches.

In terms of Sec 19 par. 1 of the accounting procedures for entrepreneurs booking in the double-entry bookkeeping system, a provision is created on basis of the caution principle to cover risks and losses. The provision is a liability representing an existing obligation of the accounting unit from past events which will probably decrease the economic benefits of the accounting unit in the future, whereby it is valued by means of an estimate in an amount sufficient to cover the existing obligation as of the balance-sheet date in due consideration of risks and uncertainties, in case the precise amount of this liability is not known. It is important to realise that it is an existing obligation. That means that a certain fact has arisen in the past already, due to which the provision has to be created. Sec. 19 par. 7 of the accounting procedures contains an

enumerative list of the usual provision types. However, that does not mean that a provision cannot be created also for other obligations, which are expected to be fulfilled in the future.

Items not booked as usual liabilities, e.g. unbilled deliveries, accepted services, are booked to the unbilled deliveries account, if the accounting unit knows the amount of the liability as of the balance-sheet date on basis of the contract, delivery note or other document (Sec 50 par. 6 of the accounting procedures).

The basic precondition to be considered is, that a provision is booked if it represents a liability with an uncertain timing or amount (Sec 26 par. 5 of the Act on Accounting) and an unbilled delivery is booked if we know the timing and amount of the liability (Sec 19 par. 1 of the accounting procedures), i.e. the precise amount.

Some of the following measures must be taken in order to ensure the completeness of provisions:

- in case of regular / repetitive expenses – reconciliation with the registry of contracts of the company, reconciliation with the accounting of the company (e.g. the respective expense booked 12x), preparation of an overview of expenses repeated every month or year, e.g. in form of a chart, with which the accountancy can be subsequently reconciled;
- in case of irregular / one-off expenses – reconciliation with the registry of orders or order backlogs, information from responsible employees of individual departments, whether they are informed of delivered and unbilled services or open orders (e.g. in form of a circuit letter or a questionnaire), consulting the legal representative of the company regarding possible existing claims to the company which could decrease its economic benefits in the future. As well as in case of repetitive expenses, a source is the registry of contracts which should include also eventual sanctions for the non-compliance with obligations resulting from the contacts.

Contact for more information

Michal Mitruška
T +421 257 200 411
Michal.mitruska@roedl.com

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Rödl & Partner Bratislava
Lazaretská 8, 811 08 Bratislava
Tel.: + 421 (2) 57 200 411 | www.roedl.com/sk

Responsible for the content:
Law area
JUDr. Maroš Tóth, MBA – maros.toth@roedl.com
Tax area
Peter Alföldi – peter.alfoldi@roedl.com
Area Economics
Mikuláš Ivaško – mikulas.ivasko@roedl.com

Layout: Miriama Zendeková – miriama.zendekova@roedl.com

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