

Status

legal entities and natural persons – entrepreneurs

from the point of view of personal data protection

The regulation protects the basic rights and freedoms of natural persons, and in particular their right for the protection of personal data. According to recital 14 of the Regulation, this Regulation does not apply to processing of personal data that concerns legal entities, especially established businesses as legal entities, including the name, form and contact details of the legal entity.

In this context, we draw attention to the conclusions of the judgment of the European Court of Justice of the Union¹, according to which legal entities can claim protection only to the extent in which the name of a legal entity identifies one or more natural persons. It is also possible to mention opinion of the working group WP29 4/2007, according to which, information on legal persons can also be considered related to natural persons, for example if the name of a legal entity is derived from the name and surname of a natural person.

Office for the Protection of Personal Data of the Slovak Republic (hereinafter referred to as "the Office") si currently interprets the question in question in such a way that it is clear from the relevant recital 14 of the Regulation, that even when processing data on companies established as legal entities, it may occur to the processing of personal data of natural persons. The Regulation, as well as Act No. 18/2018 Coll. with however, it does not apply to the processing of such personal data.

Personal data of natural persons who represent the legal entity, act on its behalf, are fully subject to protection according to Regulation and Act no. 18/2018 Coll., therefore, for example also to the data on the statutory representatives of the legal entity contained in the contract documentation², or are listed on portals containing mainly economic information on companies (publicly available sources³), the legislation according to the Regulation applies and Act no. 18/2018 Coll. Of course, the above applies only in cases where processing is required occurs within the scope of activities that are not within the scope of the Regulation (Articles 2 and 3) and Act No. 18/2018 Z. z. excluded.

Natural persons operating a business within the meaning of Act no. 455/1991 Coll.

on trade (Trade Act) as amended and natural persons

carrying out business activity according to special legal regulations (so-called free

In more detail, the judgment of the Supreme Court of the EU in the joint cases C-92/09 and C-93/09, Volker und markus
Schecke GbR and Hartmut

Eifert/Federal Land Hesse, 9 November 2010, points 53, 54 and 87

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The legal basis for processing in this case can be, for example, a legitimate interest according to Art. 6 par. 1

Regulations or the contract itself in accordance with Art. 6 par. 1 letter b) Regulations. Regarding contact information
employees of the contractual parties, such personal data is provided by the contract to the other contractual party by the
operator v

position of the employer, in accordance with § 78 par. 3 of Act No. 18/2018 Coll. Contact details of the legal entity that
can be assigned to a specific natural person (e.g. Anna.Nova@firma.sk) so they are also subject to protection according to
Regulations/Law No. 18/2018 Coll.

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For example Act No. 530/2003 Coll. on the Commercial Register, as amended, or Act No. 431/2002 Coll.

on accounting as amended.

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occupations) (hereinafter referred to as "natural person - entrepreneur") are special in this context
group.

Personal data is any information relating to an identified or identifiable natural person

persons - "person concerned". An identifiable natural person is a person who can be identified directly or

indirectly, in particular by reference to an identifier such as name, identification number, location data, online identifier,
or by reference to one or more elements that are specific to physical, physiological, genetic, mental,
economic, cultural or social identity of this natural person.

The possibility to identify the person concerned, either directly or indirectly, is necessary reasonable to assume. It is therefore not just a hypothetical possibility of identifying the affected person of a person that would require extraordinary effort⁴ or expense that would ultimately nor did they necessarily lead to a successful identification. As was also stated in the case of Patrick Breyer v. Federal Republic of Germany⁵, to determine whether a person is identifiable, they are take into account all means of which he is reasonably likely to use them operator or any other person to identify the relevant person. Court of Justice of the European Union stated that in order for certain data to be qualified as personal data, it is not necessary that all information enabling the identification of the person concerned they had to be in the hands of a single person. The key is the result, that is, the possibility and the ability to clearly identify a natural person and reliably distinguish them from others natural persons.

In the Amann/Switzerland⁶ case, the ECtHR pointed out that the term private life cannot be used interpret restrictively. In this case, public authorities intercepted a business telephone call the complainant. Although the wiretapping concerned an official telephone call, the ECtHR did not he believed that the retention of data about this phone call was related to private life the complainant and stated that respect for private life includes the right to contact and building relationships with other human beings. Moreover, there was no principle a reason that would justify the exclusion of an activity of a work or commercial nature from the term private life.

The ECtHR in Niemietz v. Germany stated that it could be too restrictive to limit the concept of private life to a "supremacy circle". Respect for private life it must also contain to some extent the right to establish and develop relationships with other people. Furthermore, there is no reason why the concept of private life should be understood as exclusionary activities of a professional or commercial nature, because it is during his working life that he has most people a significant, if not the greatest, opportunity to develop relationships with the outside world. This one

the opinion is supported by the fact, as the Commission rightly pointed out, that it is not always possible to be precise recognize which activities of an individual form part of his professional or business life and which do not. Therefore, especially if an individual is self-employed, his work can

The Supreme Court of the Slovak Republic in the decision no. stamp 6 Sžo 250/2008 defined that disproportionately high effort means obtaining data from a hard-to-reach source, obtaining data by long-term search, by multiple verification, comparison and sorting or obtaining data by survey, the results of which is can be assigned to several natural persons, which must be further analyzed, refined and selected.

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ECJ Judgment C-213/15, dated 19 October 2016 Patrick Breyer v. Federal Republic of Germany

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ECtHR, Amann/Switzerland, no. 27798/95, 16 February 2000, point 65

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form part of his life to such an extent that it becomes impossible to determine in which area he acts in at a given moment in time. Denial of protection under Article 8 of the European Convention on Human Rights rights, on the basis that the contested measure applied only to professional activities (so, as the government proposed in this case) could also lead to unequal treatment, because this protection would not remain accessible to a person whose professional and non-professional activities are connected in such a way that it is not possible to distinguish between them.⁷ In the case of Volker und Markus Schecke GbR, the SC of the EU stated that for assessment the fact that the published data relates to professional activities has no significance. ⁸

It is also possible to refer to the judgment of the Supreme Administrative Court of the Czech Republic sp. stamp 1 Afs 60/2009, in which it is stated that the field of work activities of natural persons entrepreneurs it is strongly connected with their private life. It is therefore not possible to approach across the board to an analogous assessment as in the case of legal entities to which the Protection Act applies does not apply to personal data. "It is also necessary to take into account that the taxi driver in his vehicle

spends most of his working day. A taxi driver during his ride with a customer establishes and develops contacts with the surrounding world. In the case of the opposite opinion, there would be a problem unambiguously determine and distinguish what personal expressions of the taxi driver during the interaction with the customer can be characterized as work activity and what constitutes his private life. Especially in such a case, when an individual is self-employed, work is part of it private life and it is not possible to determine to what extent he is working or realizing at a given moment his private life." 9

In this matter, the Office respects the jurisprudence of the European Court of Human Rights law and the Court of Justice of the European Union, which lean towards a broad interpretation of the term the right to privacy, under which the protection of personal data can also be subsumed relating to trade or self-employment. Undoubtedly, information as well about natural persons - entrepreneurs can be responsible in terms of their substantive content definition of personal data. The affected person can also be a natural person - an entrepreneur, as it is not excluded that his privacy and personal protection could be violated data. Following on from the above, the office is of the opinion that even in the performance of a profession, everyone has the right to adequate privacy protection, which also includes the protection of personal data. Aye with regard to the close connection between private and professional life of natural persons - entrepreneurs, when processing data about them, an individual may be identified, who will identified on the basis of signs forming the performance of the activity of a natural person - an entrepreneur.

Possible allocation of some data outside the scope of Regulation/Act No. 18/2018 Coll.

can only be carried out ad hoc after taking into account the individual circumstances of the case, as determining whether it is personal data always depends on a comprehensive assessment of the available data in their mutual connection and at the same time the situation as a whole.

ECtHR, Niemietz/Germany, no. 13710/88, 16 December 1992, point 29

In more detail, the judgment of the SC of the EU in the joint cases C-92/09 and C-93/09, Volker und markus Schecke GbR, point 59

Available on the website:

http://www.nssoud.cz/files/SOUDNI_VYKON/2009/0060_1Afs_0900119A_prevedeno.pdf

In conclusion, the office adds that the European Commission also emphasizes that the Regulation applies only to natural persons. If a natural person carries out economic activities in a member state, but under the national law of a member state is not considered a legal person, then it would this person should have been granted protection according to the Regulation.¹⁰

Abbreviations used:

Regulation - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons

in the processing of personal data and on the free movement of such data, which repeals Directive 95/46/EC (General Data Protection Regulation)

Law no. 18/2018 Coll. on the protection of personal data and on the amendment of certain laws

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=31371&no=2>