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On the basis of the inspection plan for 2018, the Office carried out an inspection, the subject of which was the processing of personal data in connection with the use of facial recognition technology ("Face ID"), focusing in particular on the legality of this processing, the provision of information about this processing and the security of processed personal data data. The inspection was carried out at a construction company, which uses Face ID devices for the identification of workers present at the construction site on some of the completed construction sites. The supplier ensures the operation of this device for the inspected person. The inspectors found that the Face ID system is an attendance system that allows recording the time of arrival and departure of individual persons on the construction site, based on facial recognition. It is a set of turnstile, terminal - reading (scanning) unit and software connected to the supplier's server, which is accessed by authorized persons through a dedicated application. The personal data of workers authorized to enter a certain construction site are uploaded to the supplier's server based on the order of the inspected person. The face scan is then performed directly on a terminal located on a specific building. This scan is converted by mathematical algorithms into a so-called hash template, which remains stored only in the terminal. Each time a worker passes through the terminal, a new hash template is always calculated, which is compared with the stored one. Through the Face ID system, the controlled person processes both identification and professional data of employees, as well as information about their attendance at work. Due to the use of technology based on facial recognition, the inspectors noted that the inspected person also processes a special category of data – biometric data. The mutual relationship of the controlled person and the supplier was evaluated as the relationship of administrator and processor, while the content of the framework agreement corresponds to the requirements for an agreement on the processing of personal data according to Article 28, paragraph 3 of Regulation (EU) 2016/679. The legal basis for the considered processing was found in Article 6 paragraph 1 letter c) Regulation (EU) 2016/679 (fulfilment of legal obligations), or for biometric data in Article 9 paragraph 2 letter b) (fulfilment of obligations in the area of labor law) in conjunction with Article 6, paragraph 1 letter c) of this regulation. In addition, the fulfilment of the obligations of the inspected person resulting from Article 5 paragraph 1 letter of c) (minimization of data) and Article 5 paragraph 1 letter e) (restriction of imposition) of Regulation (EU) 2016/679, provided that the controlled person does not violate these obligations. Even in relation to the fulfilment of obligations in the area of informing data subjects according to Articles 12 to 14 of Regulation (EU) 2016/679, the

inspectors did not detect a breach of obligations, as the inspected person provides the required information both in written form directly at the construction site and also on his website . The controlled person also documented the fulfillment of obligations to keep records of processing activities in accordance with Article 30 of Regulation (EU) 2016/679. Doubts were not found even in the area of ensuring the security of processed personal data (in this regard, the inspectors assessed both the physical security of storage facilities, backups, logging and access rights, as well as the training of responsible employees and confidentiality obligations). The inspection was directed by inspector Mgr. et Mgr. Božena Čajková. Recommendation: The Office points to the fact that the matter in question was a very specific case where the controlled person was able to prove that the processing of biometric data is necessary for the purpose of fulfilling the specific duties of the controller in the sense of Article 9, paragraph 2 letter b) Regulation (EU) 2016/679 (especially safety on a large construction site). At the same time, the controlled person was not able to achieve this compliance by other, less invasive means, or previously used less invasive means proved ineffective. In this context, it is therefore necessary to draw attention to the fact that, under normal circumstances, employers cannot invoke this legal title when processing biometric data.

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