

Authorized person and instruction of the authorized person according to the new legislation

Legal regulation valid and effective until May 24, 2018, i.e. j. Act No. 122/2013 Coll. on the protection of personal data and on the amendment of certain laws as amended by Act no. 84/2014 Coll. (hereinafter referred to as "Act No. 122/2013 Coll.")

contains the legal definition of the term authorized person. According to § 4 par. 2 letters e) of Act no. 122/2013 Coll.

authorized

the person can be both an employee and an external person who is in a relationship other than employment law with the operator, but it must be a natural person who comes into contact with personal data and has been instructed on rights, obligations and responsibilities according to Act no. 122/2013 Coll.

The new legal regulation of personal data protection, which will be applied from 05/25/2018, i.e. j. Regulation of the European Parliament and of the Council (EU) 2016/679 of April 27, 2016 on the protection of natural persons during processing

of personal data and on the free movement of such data, which repeals Directive 95/46/EC (General Regulation on data protection) and Act no. 18/2018 Coll. on the protection of personal data and on the amendment of certain laws (hereinafter referred to as "GDPR" and "Act No. 18/2018 Coll.") does not recognize the obligation to educate authorized persons. In Art. 29 or § 36

Act No. 18/2018 Coll. is imposed on the operator that every person (e.g. employees) acting

based on the authorization of the operator or intermediary (the authorization can be considered e.g.

employment contract, service contract, agreement, authorization to perform an act or similar document), which has

access to personal data, processed this data only on the basis of the operator's instructions, except when

it is required of it according to a special regulation (e.g. EU regulation, laws of the Slovak Republic, etc.) or an international one contract by which the Slovak Republic is bound. If these instructions result from a special regulation or

of the international agreement to which the Slovak Republic is bound, the operator is not obliged to give to such a person further instructions.

The operator is obliged to accept the above-mentioned instructions in order to ensure compliance

measures according to Art. 32 par. 4 GDPR or § 39 par. 4 of Act no. 18/2018 Coll.

If the operator has already instructed authorized persons in accordance with § 21 of Act no. 122/2013 Z.

z., such instructions can be considered as instructions of the operator if they take into account the actual situation and set personal data protection processes as required by the GDPR or Act No. 18/2018 Coll. Listed means that the operator should take into account the results of the risk analysis, i.e. e.g. whether it does not follow from the analysis that it happened to the new rules for the current processing of personal data or to changes in security measures in connection with the processing of personal data so far, and thus whether the current instructions are really the operator's instructions, which reflect current safety standards.

The operator should also reevaluate whether the current instructions are not formulated and linked to information systems according to the legal basis in accordance with Act no. 122/2013 Coll., which do not reflect current and possibly new purposes of processing personal data according to the legal basis in accordance with Art. 6 GDPR, where applicable in connection with Art. 9 GDPR or according to § 13 of Act no. 18/2018 Coll. in connection with § 16 of Act no. 18/2018 Coll. The operator should practically review all existing lessons in the sense of the above and see if they need to be updated. If an update is required, it should be governed by the provisions already of the new legislation, and thus it would be the instructions of the operator, which can also be contained, for example, in internal ones regulations of the operator and should be as specific as possible. If the operator finds that the update is not necessary, there is no need to change the lessons to instructions just for a formal reason, as the content would continue they took into account the actual state and set processes. It is sufficient if the results of such examination are noted for example, in the safety documentation, where it is also stated that the lessons learned so far are understood as instructions in accordance with the new legislation in the field of personal data protection.

In conclusion, we draw attention to the fact that the operator and intermediary are, according to Art. 90 GDPR in conjunction with s

§ 79 par. 2 of Act no. 18/2018 Coll. obliged to oblige confidentiality about the personal data of natural persons who come

into contact with personal data of the operator or intermediary. However, the institute of secrecy fulfills a different purpose function as the very instruction of the operator according to Art. 29 GDPR or § 36 of Act no. 18/2018 Coll. He's going o a security measure, by which the operator as well as the intermediary are obliged to maintain confidentiality about the personal data they process. Such an obligation is the operator and the intermediary at the same time are also obliged to oblige natural persons who come into contact with personal data of the operator or intermediary. The above means that, in addition to the instruction according to Art. 29 GDPR or § 36 of Act no. 18/2018 Coll. there is also an obligation to bind natural persons who come into contact with personal data at the operator or the intermediary by silence.

Fulfillment of obligations under Art. 29 GDPR or § 36 of Act no. 18/2018 Coll. and according to § 79 of Act no. 18/2018 Z. z. it can also be contained in one document, as it was used in practice until now under the validity of a effectiveness of Act no. 122/2013 Coll.

In terms of the facts mentioned above, it can be summarized as follows:

The operator is obliged to fulfill his obligations according to Art. 29 GDPR or § 36 of Act no. 18/2018 Coll. and according to § 79

Act No. 18/2018 Coll., and therefore

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if the current instruction according to § 21 of Act no. 122/2013 Coll. reflects the obligations according to the first sentence, the operator does not need to develop new instructions and confidentiality,

If the current instruction according to § 21 of Act no. 122/2013 Coll. does not reflect obligations according to the first sentence, it is necessary to update (current lessons) - e.g. in the form of amendments or develop anew.