

PERSONAL DATA PROCESSING CONTRACT

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DOI: 10.26399/iusnovum.v13.4.2019.49/p.brzezinski

The article aims to discuss some elements of a personal data processing contract as part of the contract for the provision of services in accordance with Article 28 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)¹ and contractual clauses the application of which raises doubts in practice. The article in particular examines the criteria for determining whether in given factual circumstances it is necessary to enter into a contract for the provision of service in the form of a personal data processing contract.

1. PERSONAL DATA PROCESSING IN THE LIGHT OF DIRECTIVE 95/46

On 25 May 2018, GDPR replaced Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,² which regulated the rules for the processing of personal data by a processor in a less complex way than GDPR does now. Directive 95/46/EC emphasised the importance of regulating the obligation concerning confidentiality of the processing³ and

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¹ OJ L 119, 4.05.2016, pp. 1–88; hereinafter referred to as GDPR.

² OJ L 281, 23.11.1995, pp. 31–50; hereinafter referred to as Directive 95/46.

³ The provision of Article 16 Directive 95/46 stipulated: “Any person acting under the authority of the controller or of the processor, including the processor himself, who has access to personal data must not process them except on instructions from the controller, unless he is required to do so by law.”

security of the processing⁴ in the data processing contract. Under the rule of Directive 95/46/EC, a personal data processing contract was subject to the provisions of Article 31 Act on the protection of personal data of 29 August 1997.⁵ Arwid Mednis expressed an opinion, and it was a right one, that in the light of Article 31 Act of 1997, a data controller's and processor's liability was regulated in a different way: a controller was liable based on the provisions laid down in statute and a processor was liable based on the contract entered into with the data controller.⁶ Mark Webber drew attention to the fact that the obligation to ensure the compliance of personal data processing with the EU law was imposed on data controllers and processors processing data on behalf of controllers and was not directly subject to the provisions of Directive 95/46.⁷ The EU legislator decided that, in the light of GDPR, processors shall be directly obliged to meet given requirements concerning personal data that were applicable to data controllers under the rule of Directive 95/46.⁸ Below, I present the elements that a data processing contract should contain in the light of GDPR and the consequences of omitting any of the elements laid down in Article 28 para. 3 GDPR.

⁴ The provision of Article 17 Directive 95/46 stipulated:

- "1. Member States shall provide that the controller must implement appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.
Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.
2. The Member States shall provide that the controller must, where processing is carried out on his behalf, choose a processor providing sufficient guarantees in respect of the technical security measures and organizational measures governing the processing to be carried out, and must ensure compliance with those measures.
3. The carrying out of processing by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:
- the processor shall act only on instructions from the controller,
 - the obligations set out in paragraph 1, as defined by the law of the Member State in which the processor is established, shall also be incumbent on the processor.
4. For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to the measures referred to in paragraph 1 shall be in writing or in another equivalent form."

⁵ Dz.U. 1997, No. 133, item 883, consolidated text Dz.U. 2016, item 922; hereinafter referred to as Act of 1997. For changes in the data processing contracts in the light of GDPR, see e.g. R. Corbet, A. Cox, *Data Protection Clauses in Contracts – Adapting to GDPR*, Privacy & Data Protection 16(6), 2016, pp. 9–10.

⁶ A. Mednis, *Komentarz do art. 31 ustawy o ochronie danych osobowych*, [in:] A. Mednis, *Ustawa o ochronie danych osobowych. Komentarz*, LEX 1999.

⁷ M. Webber, *The GDPR's Impact on the Cloud Service Provider as a Processor*, Privacy & Data Protection 16(4), 2016, p. 11.

⁸ J. Byrski, *Umowne powierzenie do przetwarzania danych osobowych w ustawie o ochronie danych osobowych, dyrektywie 95/46 i w ogólnym rozporządzeniu o ochronie danych*, [in:] G. Sibiga (ed.), *Ogólne rozporządzenie o ochronie danych. Aktualne problemy ochrony danych osobowych 2016*, Biblioteka Monitora Prawniczego 2016, p. 35.

2. ELEMENTS OF A PERSONAL DATA PROCESSING CONTRACT IN THE LIGHT OF GDPR

A data processing contract should specify the parties to that contract, i.e. a controller⁹ and a processor¹⁰. The terms “controller”¹¹ and “processor”¹² were explained by the Working Party of the Protection of Individuals with Regard to the Processing of Personal Data set up in accordance with Article 29 in its opinion 1/2010 concerning the terms “data controller” and “processor”. To tell the truth, the opinion was based on Directive 95/46 but the concepts do not considerably differ from the terms controller and processor adopted in GDPR. Following the guidelines provided in the opinion, one should acknowledge that in order to establish whether a given entity is a data controller¹³ or a processor, it is necessary to first of all verify which entity decides for what purposes and in what way personal data are processed.¹⁴ It is necessary to emphasise here that it is not an agreed will of the parties to the contract but the findings of the analysis of factual circumstances of the processing that decide whether a given entity is a controller. Gerard Karp is right to emphasise that the provisions of law as well as the clauses of particular contracts may constitute very important factors in determining whether a given entity has a status of a controller.¹⁵ As practice shows, it is not always easy to determine whether, within a given contract, i.e. between the two entities, there is a relationship between two controllers¹⁶ or it is necessary to enter into a data processing contract. One must share the opinion of Karol Cieniak, who indicates that the most important for distinguishing between the role of a controller and a processor is to establish who decides

⁹ The provision of Article 4(7) GDPR: “‘controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.”

¹⁰ The provision of Article 4 para. 8 GDPR: “‘processor’ means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.”

¹¹ The provision of Article 2(d) Directive 95/46: “‘controller’ shall mean the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law.”

¹² The provision of Article 2(e) Directive 95/46: “‘processor’ shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.”

¹³ I do not discuss situations in which the provisions of law stipulate that a given entity shall be a controller.

¹⁴ Grupa Robocza ds. Ochrony Danych powołana na mocy art. 29, *Opinia 1/2010 w sprawie pojęć „administrator danych” i „przetwarzający”* (WP 169), 16.02.2010, pp. 14–15; see <https://giodo.gov.pl/pl/1520057/3595>.

¹⁵ G. Karp, *Administrator danych osobowych – podmiot decydujący o celach i środkach przetwarzania danych*, Palestra No. 1–2, 2011, p. 62.

¹⁶ It is not possible to exclude a situation in which the same entity can be a controller of some data and a processor of some other. Personal data can also be processed by a few controllers that are referred to as co-controllers. However, the issue of the processing of personal data by co-controllers goes beyond the subject-matter of this article.

about the purposes of data processing. However, it is necessary to differentiate the purpose of the processing from the interest of the processing.¹⁷ The author rightly indicates that it is not important who the beneficiary of the processing is but where the decision-making centre determining the purpose of the processing is.¹⁸ Still, one should emphasise that it is sometimes extremely difficult to decide whether under a certain contract there is one decision-making centre or two (i.e. whether every entity has their own purpose of the processing), which would mean that there are two controllers.

A personal data processing contract can be entered into as a result of concluding a main contract between the entities or as an independent one. Many data processing agreements are entered into beside a main contract, although data processing is not carried out on behalf of the controller. For example, it is justified to ask the question whether there is a relationship between a controller and a processor in case of a seller and an acquirer of a company stake. In M&A transactions, a seller usually provides an acquirer with information about the company concerned, including the personal data of employees and clients. The parties enter into an agreement on confidentiality in which they agree, inter alia, what type of personal data and in what way will be made available to the acquirer for the purpose of the company evaluation (called due diligence). As Roisín Cregan and Sekou Taylor rightly notice, it is not possible to limit the acquirer's purpose of the processing to that determined by the seller. An acquirer processes indicated data for the need of determining the price of the acquisition and the conditions of the transaction.¹⁹ The authors rightly draw attention to the fact that in such a situation, an acquirer is a data controller.²⁰ In Chrystian Poszwiński's opinion, Article 6 para. 1(f) GDPR constitutes grounds for data processing by an acquirer in an M&A transaction.²¹ According to this author, data processing by an acquirer in accordance with Article 6 para. 1(f) GDPR may mean that the entity is granted the status of a controller.²²

There is also a question whether personal data processing is entrusted to another entity in a situation when one bank (a subsidiary) uses the information system implemented by another bank (a parent company) that makes it possible to verify clients' data in connection with the fulfilment of the obligations resulting from the Act on the prevention of money laundering and terrorist financing in spite of the fact that the former bank makes its clients' data available to the parent company based on the outsourcing contract entered into under Article 6a para. 1(2) Act: Banking Law. In my opinion, the wording of Article 6a para. 1(2) Act: Banking Law is not a decisive factor in determining the status of banks. The legislator made the following reservation in it: "A bank may, based on a contract entered into in

¹⁷ K. Cieniak, *Powierzanie przetwarzania danych osobowych*, Monitor Prawniczy No. 9, 2019, p. 507.

¹⁸ *Ibid.*

¹⁹ R. Cregan and S. Taylor, *How Much Control Makes a Controller?* Privacy & Data Protection 18(6), 2018, p. 11.

²⁰ *Ibid.*

²¹ Ch. Poszwiński, *Risk based approach w ochronie danych osobowych a ryzyka w transakcjach*, Przegląd Prawa Handlowego No. 4, 2019, p. 27.

²² *Ibid.*

writing, *entrust* an entrepreneur or a foreign entrepreneur, with the reservation of Article 6d, with the task of performing (...) activities actually connected with banking operations.” [emphasis added]. Although, in Article 6a para. 1(2) Act: Banking Law, the legislator used the word “entrust”, it does not mean that there is a controller-processor relationship between a bank and an entrepreneur commissioned to perform activities actually connected with banking operations. It seems that an entrepreneur will always have the status of a processor if a bank entrusts them with the task to perform activities in accordance with Article 6a para. 1(1) Act: Banking Law, where the legislator stipulated that such an entity acts “on behalf of and in favour of the bank”, which excludes its recognition as a controller (co-controller) that always acts on their own behalf and in favour of themselves.

Article 28 para. 1 GDPR stipulates that a processor should only be an entity having sufficient organisational and technical measures that guarantee that processing will meet the requirements of GDPR and the rights of data subjects.²³ In practice, entrepreneurs choose a processor in accordance with their internal procedure, which most often envisages carrying out a survey with a potential processor. The survey contains a series of questions concerning the processing analysed, e.g. questions concerning guarantees that persons authorised by the processor to process personal data have committed themselves to confidentiality.

GDPR stipulates what elements should be included in a data processing agreement. In accordance with Article 28 para. 3 GDPR, a data processing contract should set out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller. It is not clear how the term “subject-matter of the processing” should be interpreted. Jan Byrski assumes that the subject-matter of the processing of personal data should mean the description of particular operations on the data and the indication whether they are independent or subsidiary to the main contract or the territorial scope of data processing.²⁴ In

²³ Recital 81 GDPR stipulates: “To ensure compliance with the requirements of this Regulation in respect of the processing to be carried out by the processor on behalf of the controller, when entrusting a processor with processing activities, the controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation, including for the security of processing. The adherence of the processor to an approved code of conduct or an approved certification mechanism may be used as an element to demonstrate compliance with the obligations of the controller. The carrying-out of processing by a processor should be governed by a contract or other legal act under Union or Member State law, binding the processor to the controller, setting out the subject-matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects, taking into account the specific tasks and responsibilities of the processor in the context of the processing to be carried out and the risk to the rights and freedoms of the data subject. The controller and processor may choose to use an individual contract or standard contractual clauses which are adopted either directly by the Commission or by a supervisory authority in accordance with the consistency mechanism and then adopted by the Commission. After the completion of the processing on behalf of the controller, the processor should, at the choice of the controller, return or delete the personal data, unless there is a requirement to store the personal data under Union or Member State law to which the processor is subject.”

²⁴ J. Byrski, *supra* n. 8, pp. 39–40.

order to indicate that a data processing contract meets the requirement of setting out the subject-matter of the processing, it is sufficient to indicate the types of processing activities, e.g. as it was determined in the Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council. In practice, parties to a data processing contract do not often describe what particular activities a processor will carry out and limit themselves to indicate that the processor will process them following the rules laid down in the contract and in accordance with GDPR. In my opinion, the indication set out in a subsidiary data processing contract that the processing of personal data will be performed only for the purpose of implementing the main contract indirectly indicates operations that the processor will perform on the data and it meets the requirement of defining “the subject-matter of the processing” referred to in Article 28 para. 1 GDPR.

A personal data processing contract is usually entered into for the duration of the main contract provided that it is subsidiary in nature. If it is an independent contract, the duration of data processing depends on the parties’ agreement. The specification of the purpose for which the data is to be processed is extremely important because if the processor processes the data beyond the scope of the purpose determined in the contract with the controller, it may turn out that the data are processed by the processor acting as another controller and not on behalf of the one who is the party to the data processing contract signed.

A data processing contract should also specify the type of personal data, e.g. a natural person’s given name, surname and e-mail address. It is not sufficient to specify in a contract that a processor (a person who is a party to a contract for the provision of services to another entity in the form of office administration) shall process personal data of the controller’s employees. It must be indicated what type of data will be transferred to the processor for the processing. It is necessary to specify in the contract what category of persons will be data subjects, e.g. the controller’s employees or clients.

The EU legislator clearly indicated that a data processing contract should specify the rights and obligations of the controller and provided an example catalogue of the processor’s obligations (Article 28 para. 3(a) to (h) GDPR).

A question is raised whether a controller and a processor may make a reservation limiting their compensatory liability for failure to perform or inappropriate performance of the processor’s duties laid down in Article 28 para. 3 GDPR. Emmanuel Salami believes that Article 82 GDPR may be interpreted in two ways.²⁵ On the one hand, the author indicates that the provision of Article 82 GDPR may mean that the limitation of the processor’s contractual liability to the controller would be in conflict with the principle of the controller’s/processor’s liability for the “entire damage” caused by them in the course of data processing.²⁶ On

²⁵ E. Salami, *Examining the Legality of Limitation of Liability Clauses under the GDPR*, Computer and Telecommunications Law Review No. 24(8), 2018, pp. 177–178.

²⁶ *Ibid.*, p. 177.

the other hand, the author argues that the provision of Article 82 GDPR concerns only the principles of the controller's/processor's compensatory liability to the data subject²⁷ and, as a result, the introduction of the limitation of compensatory liability for failure to perform or inappropriate performance of a data processing contract to that contract is in conformity with GDPR. John O'Brien indicates that many processors try to introduce the liability limitation clause to a contract to cap the level to 12-month remuneration.²⁸ Rob Corbet argues that after GDPR entered into force, a processor should be more careful and never accept the unlimited liability for non-compliance with the provisions for the protection of data.²⁹ In my opinion, there are no obstacles to introduce a liability limitation clause in a data processing contract and establish the maximum level of a processor's compensatory liability to a controller for the infringement of the provisions of GDPR. In practice, contracts also contain clauses that envisage a controller's right to recourse in case the controller pays compensation to the data subject whose personal data were subject to processing as a result of a pecuniary penalty imposed on the controller by a supervisory authority.

It is worth drawing attention to the fact that there are clauses appearing in data processing contracts which lay down an obligation to pay a processor remuneration for the performance of data processing activities specified in the contract. For example, the following clause can be found in contracts: "The Processor's remuneration for the performance of the activities specified herein is covered by the monthly salary laid down in § 6 of the contract entered into by the Controller and the Processor in Warsaw on (...)". In Emmanuel Salami's opinion, a processor cannot demand that a controller pay the remuneration for the fulfilment of obligations resulting from the provisions of law that are absolutely binding.³⁰ Katarzyna Witkowska-Nowakowska indicates that the parties to a personal data processing contract may come to an agreement on remuneration for the processing of personal data. Undoubtedly, GDPR stipulates whether a data processing contract can prescribe remuneration. It seems that there are no obstacles in the way the parties establish remuneration for a processor for the preparation of infrastructure necessary for fulfilling the processor's obligations resulting from GDPR. It also seems that a data processing contract can contain a clause determining remuneration just for the processing in accordance with GDPR, in spite of the fact that a processor is obliged to fulfil obligations specified in Article 28 para. 3 GDPR, regardless of whether remuneration is paid or not. The determination of remuneration for a processor remains outside the scope of the EU law interest and can be regulated in a data processing contract based on the principle of the freedom of contracts (Article 353¹ Civil Code).

The provision of Article 28 para. 3 GDPR requires that a controller and a processor enter into a data processing contract provided that the processing is not subject to another legal measure. Thus, a question arises whether the processing carried out

²⁷ *Ibid.*, pp. 178–179.

²⁸ J. O'Brien, *GDPR Series: Outsourcing Contracts – all Changed, Changed Utterly?*, Privacy & Data Protection 18(4), 2018, p. 4.

²⁹ R. Corbet, A. Cox, *supra* n. 5, p. 10.

³⁰ E. Salami, *supra* n. 25, p. 179.

on no legal grounds (i.e. not based on a contract or another legal instrument) is a legal activity that is void (i.e. does not take effect). This opinion is expressed in literature.³¹ Another question can also be asked. What are the legal consequences of omitting any of the elements specified in Article 28 para. 3 GDPR in a data processing contract? It seems that the lack of a contract alone or any of the elements specified in Article 28 para. 3 GDPR does not make this agreement entirely or partially null and void (i.e. ineffective). I agree with Maciej Gutowski's opinion that admits the recognition of a given activity as ineffective in the light of Article 58 Civil Code because it is in conflict with the EU law, i.e. GDPR.³² Nevertheless, GDPR stipulates sanctions for the infringement of Article 28 GDPR in an exhaustive way.³³ It seems that the lack of any of the elements indicated in the above-mentioned Article 28 para. 3 GDPR does not make a data processing contract invalid. Article 83 para. 4(a) GDPR stipulates a sanction for the infringement of the provisions constituting a controller's and a processor's obligations specified in Article 28 para. 3 GDPR. In my opinion, the sanctions laid down in Article 83 para. 4(a) GDPR constitute a complex regulation and it is groundless to look for legal consequences for the infringement of Article 28 para. 3 GDPR in the provisions of member states' national law. It seems that reference to national sanctions (i.e. Article 58 Civil Code) in case of the infringement of the requirements laid down in Article 28 para. 3 GDPR by the parties to a data processing contract is in conflict with the principle of the member states' procedural autonomy, which may cover the issues of substantive law.

3. CONCLUSIONS

Unlike in Directive 95/46, in GDPR the EU legislator introduced more detailed formal requirements that a data processing contract should meet. However, as practice shows, the application of the provisions of GDPR still raises a number of controversies and, as it is indicated in this article, the establishment whether there is a controller-processor relationship between the parties in a given factual state and whether, as a result, they should enter into a data processing contract (provided that another legal instrument does not constitute grounds for the processing) is not an easy task. Moreover, a series of clauses can be found in data processing contracts that raise controversies in the doctrine, e.g. a processor can be paid remuneration for data processing specified in a data processing contract. It is also unclear what consequences can result from the omission of any of the elements specified in Article 28 para. 3 GDPR in a data processing contract, and whether such a contract is null and void if it is concluded with the infringement of Article 28 para. 9 GDPR.³⁴ In order

³¹ K. Witkowska-Nowakowska, [in:] E. Bielak-Jomaa, Dominik Lubasz (eds), *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz*, Warszawa 2018, p. 635.

³² M. Gutowski, *Sprzeczność z prawem Unii Europejskiej jako przesłanka nieważności czynności prawnej na podstawie art. 58 k.c.*, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* No. 1, 2006, p. 120.

³³ Compare Article 83 GDPR.

³⁴ The provision of Article 28 para. 9 GDPR stipulates: "The contract or the other legal act referred to in paragraphs 3 and 4 shall be in writing, including in electronic form."

to resolve the above-mentioned problems, it is necessary to refer to the principles of the EU law (e.g. the principle of procedural autonomy)³⁵ and the limitations within which the EU legislator regulated the rules for the processing of personal data. With regard to the consequences of the infringement of GDPR in the area concerning the maintenance of a specified written form of a data processing contract (the oral form is excluded) as well as formal requirements specified in Article 28 para. 3 GDPR, the EU regulation is complete. There is no need to refer to the provisions of national law in order to identify sanctions applicable in case of the infringement of GDPR in the area discussed above. In my opinion, there are also no obstacles to introduce additional clauses to a data processing contract (e.g. concerning contractual compensation in case of the infringement of the rules for data processing by a processor or the remuneration for the processing of personal data on behalf of a controller).

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³⁵ Dawid Miąsik argues that the procedural autonomy covers both systemic issues and strictly procedural ones, and sometimes also issues related to substantive law. D. Miąsik, *Zasady ogólne (podstawowe) prawa Unii Europejskiej*, [in:] A. Wróbel (ed.), *Stosowanie prawa Unii Europejskiej przez sądy*, Warszawa 2010, p. 241.

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PERSONAL DATA PROCESSING CONTRACT

Summary

The author of the article describes selected elements of a data processing contract such as the parties to a contract and the subject-matter of processing. Moreover, he analyses contractual clauses that can be found in business practice, e.g. the remuneration for data processing clause or the limitation of a processor's liability for the infringement of contractual provisions, and evaluates them with respect to the compliance with the General Data Protection Regulation.

Keywords: personal data processing contract, personal data, processor's liability, GDPR

UMOWA O POWIERZENIU PRZETWARZANIA DANYCH OSOBOWYCH

Streszczenie

W niniejszym artykule autor opisał wybrane elementy umowy o powierzeniu przetwarzania danych osobowych, takie jakie strony umowy i przedmiot przetwarzania. Ponadto w artykule przeanalizowano spotykane w obrocie gospodarczym klauzule umowne, jak np. klauzule odpłatności przetwarzania danych, granic odpowiedzialności podmiotu przetwarzającego za naruszenie postanowień umowy, poddając je ocenie pod kątem zgodności z ogólnym rozporządzeniem o ochronie danych osobowych.

Słowa kluczowe: umowa powierzenia przetwarzania danych osobowych, dane osobowe, odpowiedzialność podmiotu przetwarzającego, RODO

CONTRATO DE ENCARGO DE TRATAMIENTO DE DATOS PERSONALES

Resumen

En el presente artículo el autor describe elementos esenciales del contrato de encargo de tratamiento de datos, tales como las partes del contrato, el objeto de tratamiento. Además, el artículo analiza las cláusulas contractuales conocidas en el tráfico mercantil, como p.ej. cláusula de pago por el tratamiento de datos, límites de responsabilidad del sujeto que trata los datos por la infracción del contrato, valorándolas desde el punto de vista de conformidad con el reglamento de protección de datos.

Palabras claves: contrato de encargo de tratamiento de datos personales, datos personales, responsabilidad por el sujeto que trata los datos, RGPD

ДОГОВОР О ПОРУЧЕНИИ ОБРАБОТКИ ПЕРСОНАЛЬНЫХ ДАННЫХ

Резюме

В данной статье автор рассматривает отдельные элементы договора по аутсорсингу обработки персональных данных, а именно: стороны договора, объект обработки. Кроме того, в статье анализируются договорные положения, встречающиеся в хозяйственной практике, как например: пункт об оплате за обработку данных, пределы ответственности обработчика за нарушение положений договора. Оценивается их соответствие Общему регламенту ЕС по защите персональных данных.

Ключевые слова: договор поручения обработки персональных данных, персональные данные, ответственность субъекта осуществляющего обработку персональных данных, Общий регламент ЕС по защите персональных данных

DER VERTRAG ÜBER DIE DATENVERARBEITUNG IM AUFTRAG

Zusammenfassung

Im vorliegenden Artikel beschreibt der Autor ausgewählte Vertragsbestandteile des Auftragsdatenverarbeitungs-Vertrages, wie beispielsweise die Parteien der Vereinbarung und den Gegenstand der Datenverarbeitung. Darüber hinaus werden in dem Beitrag im Geschäftsverkehr übliche Vertragsklauseln, wie die Klausel über die Vergütung der Datenverarbeitung, und die Grenzen der Haftung des Auftragsverarbeiters für Verstöße gegen die Vertragsbedingungen analysiert und diese einer Bewertung hinsichtlich ihrer Vereinbarkeit mit der Datenschutz-Grundverordnung unterzogen.

Schlüsselwörter: Vertrag über die Datenverarbeitung im Auftrag, Auftragsdatenverarbeitungs-Vertrag, personenbezogene Daten, Rechenschaftspflicht des Auftragsverarbeiters, DSGVO

CONTRAT DE SOUS-TRAITANCE DES DONNÉES PERSONNELLES

Résumé

Dans cet article, l'auteur décrit certains éléments du contrat de sous-traitance des données personnelles, tels que les parties au contrat, l'objet du traitement. En outre, l'article analyse les clauses contractuelles rencontrées dans les transactions commerciales, telles que la clause relative au paiement du traitement des données, des limites de la responsabilité du sous-traitant en cas de violation des dispositions contractuelles, les soumettant à une évaluation de leur conformité au règlement général sur la protection des données.

Mots-clés: contrat de sous-traitance de données à caractère personnel, données à caractère personnel, responsabilité du sous-traitant, GDPR

IL CONTRATTO DI AFFIDAMENTO DEL TRATTAMENTO DEI DATI PERSONALI

Sintesi

Nel presente articolo l'autore ha descritto elementi scelti del contratto di affidamento del trattamento dei dati personali, come le parti del contratto, l'oggetto del trattamento. Inoltre nell'articolo ha analizzato le clausole contrattuali utilizzate nei rapporti commerciali, come ad esempio la clausola di remunerazione del trattamento dei dati, dei limiti della responsabilità del responsabile del trattamento per la violazione delle norme contrattuali, valutandole sotto l'aspetto della conformità al regolamento sulla protezione dei dati personali.

Parole chiave: contratto di affidamento del trattamento dei dati personali, dati personali, responsabilità del responsabile del trattamento, GDPR

Cytuj jako:

Brzeziński P., Personal data processing contract [*Umowa o powierzeniu przetwarzania danych osobowych*], „Ius Novum” 2019 (Vol. 13) nr 4, s. 184–195. DOI: 10.26399/iusnovum.v13.4.2019.49/p.brzezinski

Cite as:

Brzeziński, P. (2019) 'Personal data processing contract'. *Ius Novum* (Vol. 13) 4, 184–195. DOI: 10.26399/iusnovum.v13.4.2019.49/p.brzezinski