



MASARYK UNIVERSITY FACULTY OF LAW

The project **European Union Regulation of Financial Services online (175798-LLP-1-2010-1-CZ-AJM-MO)** executed from 2011 to 2013 is co-financed from the resources of Directorate General Education and Culture (EAC) of the European Commission.

Grantee: Masarykova univerzita, Žerotínovo nám. 617/9, 601 77 Brno, Czech Republic. 19164,60 EUR has been granted from the resources of the European Union.



Education and Culture DG

Lifelong Learning Programme

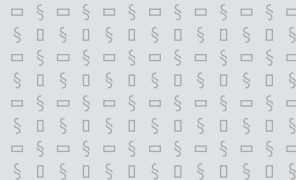
Jean Monnet Module

Privacy in Surveillance Systems in Banking and Finance Call Centers

Privacy at Workplace conference
Pécs, Hungary, April 2nd - 4th, 2012

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Privacy in Surveillance Systems in Banking and Finance Call Centers

- This area has been a part of the education preparations in the project European Union Regulation of Financial Services online (175798-LLP-1-2010-1-CZ-AJM-MO).
- The banking and finance call centers are essential part of banking and financial sector in general.

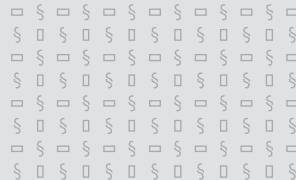
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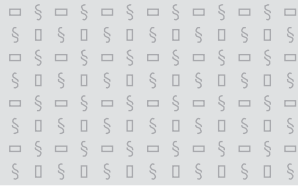
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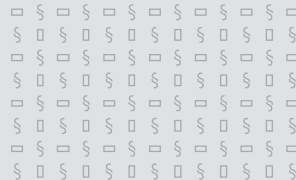
Why call centers?

- Call centers' employees are exposed to monitoring and surveillance with much greater intensity than other employees
- Call centers are usually subject to the efficiency monitoring and to the recording of phone/e-mail/other electronic communication
- Employees of call centers are usually working with very sensitive data, for example regarding income, property, consumer preferences



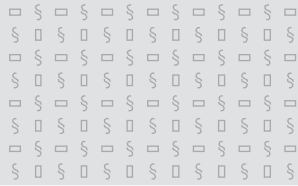
Call centers and privacy

- Call centers deal with personal data of clients
- Call centers often record client data for later usage as instruments of proof.
- Non-disclosure duty.
- Legal, technical and organizational requirements for data processing and data administration.



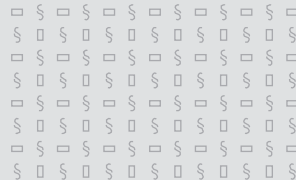
Privacy at a call center

- Privacy and non-disclosure requirements are based on:
 - Banking Act
 - Credit Unions Act
 - Central Banking Act
 - Act on Business Undertakings on the Capital Market
 - Labour Code (§276 part 3 - applicable also for the contractors in the Czech Republic)



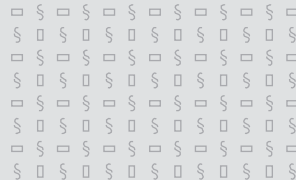
Privacy protection for a client - and what about the employee?

- All these acts protect the privacy of a client.
- They are not connected with the protection of workers' privacy. This area is left to the general regulation.



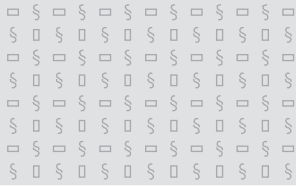
Privacy and Personal Data

- Private view - personality protection and privacy protection
 - Czech Civil Code No. 40/1964 Sb. §§11 - 16
- Private view - constitutional background
 - Convention for the Protection of Human Rights and Fundamental Freedoms as amended, namely art. 8, art. 10 and art. 13
 - Charter of Fundamental Rights of the European Union (2007/C 303/01), namely art. 1, art. 3, art. 4, art. 31 and art. 54



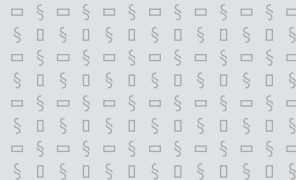
Privacy and Personal Data

- Public view - data protection
 - Czech Data Protection Act No. 101/2000 Sb. as amended
- Public view - constitutional background
 - Charter of Fundamental Rights of the European Union (2007/C 303/01), namely art. 8, art. 31 and art. 54
 - Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 as amended, namely art. 5, art. 7, art. 8 and art. 13



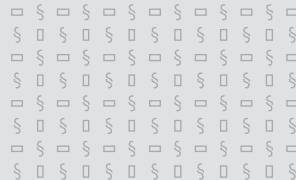
Privacy and Personal Data

- The way how the operator interacts with the client is the display (outcome) of personal nature.
- Therefore the personality protection is applicable on the recording of the interaction of the operator.



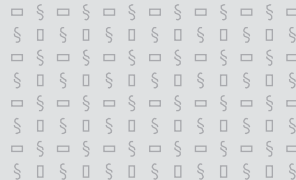
Privacy and Personal Data

- The operator conducts the labour according Labour Code 262/2006 Sb.
 - Czech Labour Code does not contain specific regulation of privacy at workplace, therefore the recording of employees is regulated by the Civil Code according to §4 of the Czech Labour Code
 - According to §99 conditions regarding the labour must be preliminarily discussed with the labor union if it exists (conditions obviously include recording of the employees' activities)



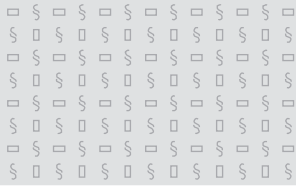
Privacy feelings of employees

- Stanton and Weiss (2000) created a social sciences research about employees attitude to monitoring and surveillance.
- Majority of employees in that research stated that they accept being monitored and surveilled although they have no idea what their employer is doing with the data obtained by the monitoring and surveillance.
- Some of these employees stated they believe their employer is using the obtained data lawfully and ethically.



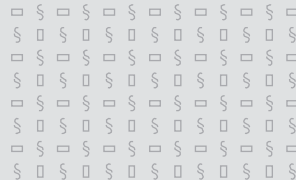
Call centers and recording/surveillance

- Call center employees are usually recorded while talking to clients => instrument of proof.
- Call center employees are surveilled by the automatic instruments monitoring the working time usage => efficiency.
- Call center employees are supervised on the basis of efficiency (statistics on each called or calling customer) => efficiency.



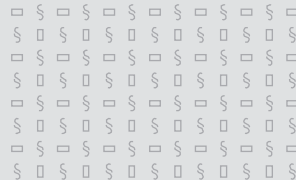
Call centers and recording/surveillance

- Call center employees may be recorded by security cameras => security, property protection.
- Call center employees may be surveilled by the automatic instruments monitoring the internet usage => efficiency.
- Call center employees are supervised by the supervisory worker walking around them and giving them hints if required => required for the qualified working performance.
- ...



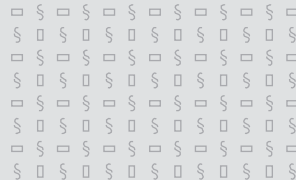
Why do banks and financial institutions need this amount of data?

- Fulfilling legal duties regarding financial services
 - Deposit Insurance Scheme (§ 41c part 3 Banking Act)
 - Anti-Money Laundering (§ 7 AML Act No. 253/2008 Sb.)
 - Instruments of Proof (not a legal duty, but a practical necessity)
- Bank's or institution's interests protection (no legal duty, but a practical necessity)



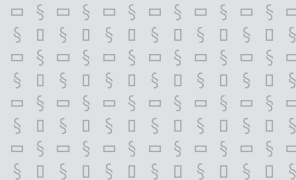
Why do banks and financial institutions need this amount of data?

- Security reasons (defence against misuse of own property - may be the violation of right to respect for private life and correspondence - article 8 Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14
 - as in Case of Copland v. The United Kingdom - 62617/00 [2007] ECHR 253 (3 April 2007))



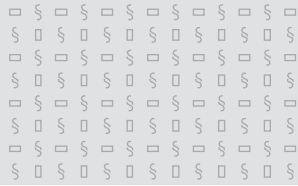
Call centers and recording/surveillance

- Great amount of personal data in video/audio/textual form is created.
- Aggregation personal data of employees gained for different purposes without explicit consent?!?
- Aggregation personal data of employees gained by different type of consent/without consent unless stated otherwise in the explicit consent?!?



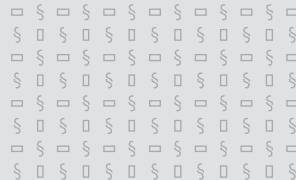
Preliminary requirement for surveillance

- **Notification to the Czech Data Protection Office**
(www.uoou.cz)
- According to §16 Czech Data Protection Act it has to contain:
 - The identification of the institution - the controller
 - The purpose of the data collected (or purposes)
 - The categories of data subjects and data collected
 - The sources of data, the place and the methods of data processing, the description of methods of processing, the recipient of data
 - The subjects receiving data from the data processor or data controller
 - The expected data transfer abroad (including both EU and non-EU countries)
 - Information regarding the security of data...



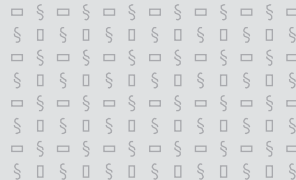
Privacy and Personal Data

- The telephone being recorded must be designated specifically for corporate usage, not for the personal usage - counter example with the violation of the the private telephone being monitored in European Court of Human Rights, Halford v. United Kingdom, judgment of 25 June 1997, Reports, 1997-III, p. 1017.



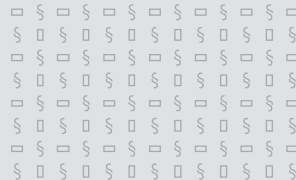
Terms for Archiving the Recorded Footage

- The recorded footage containing personal data regarding the identification of the customer and customer due diligence (AML instruments) must be archived for 10 years after the end of contractual relation with the customer
 - counted from the January 1st of the following calendar year
 - If it contains personal data it has to be deleted after that term, both in electronic and classic form
 - according to §16 AML Act (Act No. 253/2008 Sb.) and § 20 Data Protection Act



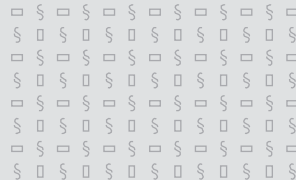
Terms for Archiving the Recorded Footage

- Recorded footage regarding non-AML-related accounting must be archived for the period of 5 years from the creation of these documents
 - it is a minimum requirement
 - if it contains personal data it has to be deleted then
 - if it does not contain personal data there is no maximum limit
 - According to § 9 Accountancy Act No. 563/1991 Sb. and § 20 Data Protection Act



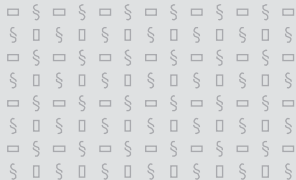
Terms for Archiving the Recorded Footage

- Recorded footage created for safety reasons have much shorter archivation terms
 - no exact minimum term is set
 - in their case only the general regulation in Data Protection Act No. 101/2000 Sb. applies
 - Generally: if it contains personal data it should be destroyed after the purpose of recording has ended



Terms for Archiving the Recorded Footage

- Recorded footage created for safety reasons have much shorter archivation terms
 - Usually kept for a time required for security purposes and for notification of criminal law agencies - **a few days at most**, then it has to be deleted - according to the facts notified previously to DPO (as the basis of the registration) - according to the Viewpoint No. 1/2006 of the Czech Data Protection Office
 - The viewpoint is not legally binding, only recommending - although it has a practical significance - DPO executes the supervision in data protection according to this viewpoint



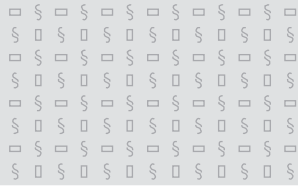
Call centers and outsourcing

- Outsourcing call centers' functions still keeps the legal responsibility for dealing with privacy issues of the customers on the part of banking and finance company, redress claim may be sued by the bank from outsourcer.
- It transfers the legal responsibility for dealing with their employees to their employers (for example working agencies, including employees posting inside the state and cross-border)



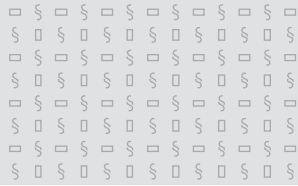
Call centers exported abroad

- 1) inside EU - free movement of services and personal data
- 2) outside EU - no free movement granted, there may be high legal requirements regarding the transfer of personal data outside EU (ex ante application to the data protection office and its approval required)



Free Movement of Personal Data

- Stipulated by the Art. 1 part 2 Directive 95/46/EC on the protection of the natural persons with regard to the personal data protection as amended.
- Free movement of personal data inside the EU cannot be limited or prohibited due to the reasons of privacy protection and basic rights protection.



Specific Council of Europe recommendation for insurance industry

- Recommendation No. R(2002) 9 on the protection of personal data collected and processed for insurance purposes (18 September 2002)
- Along with its Explanatory memorandum No. R(2002) 9
- Czech Data Protection Act complies with this recommendation regarding the privacy of institution's employees in call centers



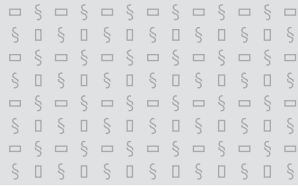
Specific Council of Europe recommendation for payments

- Recommendation No. R(90) 19 on the protection of personal data used for payment and other operations (13 September 1990)
- Along with its Explanatory memorandum No. R(90) 19
- Czech Data Protection Act complies with this recommendation regarding the privacy of institution's employees in call centers



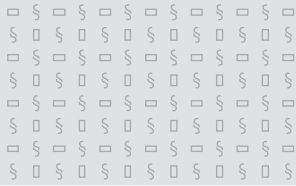
Employee's Consent

- Instrumental issue of the privacy protection at the workplace
- Is it required to be a part of working contract? My opinion: definitely.
- Is also embodying into the internal norm of the employer acceptable?
- What are the limits for employee's consent?



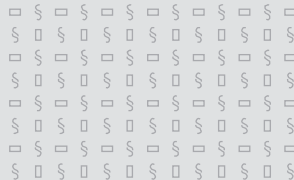
Working Contract

- Obligatory documentary form - § 34 Labour Code, No. 262/2006 Sb.
- Usually contains non-disclosure duty clause during the working relation and ex post
- Usually it also contains consent with the employee being recorded - but is it a legal requirement?



Conclusion

- Should there be a legal requirement to include explicit consent of an employee with recording?
- Should there be a legal requirement to include explicit consent of an employee with recording?



Thank you for your attention!

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