

The 3rd meeting of the Steering Group

EWC in face of GDPR



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GDRP

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL

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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)

Information the EWC may receive

The information relating in particular to:

- ▶ the situation and probable trend of employment,
- ▶ investments, and substantial changes concerning organisation, introduction of new working methods or production processes,
- ▶ transfers of production,
- ▶ mergers,
- ▶ cut-backs or closures of undertakings, establishments or important parts of establishments,
- ▶ collective redundancies

Definition of personal data

Art. 4 par 1

‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;



Recital of the directive 26

The principles of data protection should apply to any information concerning **an identified or identifiable natural person**.

The principles of data protection should therefore **not apply**

to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.

Processing of personal data

Art. 4 par. 2

‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, **consultation**, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;



Status of EWC vs. regulation 2016/679

- ▶ Subjects processing the personal data:
- ▶ ‘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;
- ▶ ‘processor’ means a natural or legal person, public authority, agency or other body which processes personal data **on behalf of the controller**;
- ▶ ‘recipient’ means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. (...)
- ▶ ‘third party’ means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, **under the direct authority of the controller or processor**, are authorised to process personal data;

Status of EWC vs. regulation 2016/679

- ▶ Conclusion:
- ▶ If personal data will be the passed to EWC by the central management it will be the result of fulfilling the legal obligation by central management.
- ▶ Therefore EWC will not **determine the purposes and means of the processing of personal data.**
- ▶ **The EWC** will not process the personal data on behalf of the controller.
- ▶ This leads to the conclusion that EWC will have the **status of personal data recipient.**

Principles relating to processing of personal data art. 5

- ▶ (a) lawfulness, fairness and transparency

processed lawfully, fairly and in a transparent manner in relation to the data subject

- ▶ Legal base for processing – art. 6 par. 1 point c) processing is necessary for compliance with a legal obligation to which the controller is subject;

Principles relating to processing of personal data

- ▶ b) purpose limitation

collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;

- ▶ c) data minimisation

adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;



Principles relating to processing of personal data

- ▶ d) accuracy
- ▶ accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- ▶ (e) storage limitation (in time)
- ▶ kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;
- ▶ after the time necessary for data processing, these data should be deleted in a way that prevents their restoration

Principles relating to processing of personal data

► (f) integrity and **confidentiality**

processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures

Central management may reserve the confidentiality of this information

Prohibition of forwarding the information

Art.. 10 par. 2 Of the Directive

EWC shall inform the representatives of the employees (...) about the content and outcome of the information and consultation procedure.

Processing of personal data

- ▶ EWC can pass the information on the merge of a given unit of an enterprise but not on a given person this merge concerns
- ▶ data provided in the form of a slide on the wall – this consultation of personal data does not generate any extra obligations for the EWC members

but

- ▶ Personal data passed in form of written or electronic document or any other form that can be preserved - requires handling data in a very careful way – as confidential information.
- ▶ Information on a new member or of a change of executive cadre ?

Article 88 Processing in the context of employment

- ▶ 1. Member States may, by law or by collective agreements, provide for **more specific rules** to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.
- ▶ 2. Those rules shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.
- ▶ 3. (...).