

EU legislation on data: SUMMARY

Data quality:

- Personal data must be processed fairly and lawfully.
- Collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes.
- Data must be adequate, relevant and not excessive.
- Data must be accurate, where necessary, kept up to date.

Criteria for making data processing legitimate:

- Data may be processed only if:
 - o subject has given his consent, or
 - o processing is necessary for a contract to which subject is part of or
 - o it's necessary for legal obligation or
 - o it's necessary to protect vital interests of subject or
 - o it's necessary for task carried out in public interest

Special categories of processing

- Member states shall prohibit the processing of personal data revealing private information such as race/ethnicity, political opinions, religion/philosophical beliefs, health/sex life **except when:**
 - o subject has given explicit consent, for carrying out obligations and rights, to protect vital interests of subject, legitimate reasons, or
 - o data is required for purposes of medicine/diagnosis/treatment by health professionals or
 - o processing data relating to criminal activity

Information to be given to the subject

- identity of controller
- purposes of the processing for which the data are intended
- other information
- if the data has not been obtained from subject:
 - o identity of controller, purposes of processing, other info

Subject's right of access to data

- confirmation to whether data relating to him are being processed and info at least about the purposes of the processing, categories of data concerned and recipients to whom the data is disclosed
- knowledge of the logic involved in any automatic processing of data concerning him

Exemptions and restrictions

- Member states may restrict the obligations and rights in cases of:
 - o article 6 (1): Data must be processed fairly and lawfully, data is accurate, adequate and relevant
 - o article 10 & 11 (1): Information given to subject
 - o article 12: Subject's right to access data
 - o article 21: Publicizing of processing operations

WHEN such a restriction constitutes a necessary measures to safeguard:

- o (a) national security
- o (b) defense
- o (c) public security
- o (d) prevention, investigation, detection and prosecution of criminal offences
- o (e) an important economic or financial interest of member state or EU
- o (f) a monitoring, inspection or regulatory function connected with the exercise of official authority related to (c) (d) or (e)
- o (g) protection of data subject or of rights and freedoms of others

Subject's right to object

- (a) On compelling legitimate grounds related to particular situation to the processing of data relating to him. Where there is a justified objection, processing instigated by the controller may no longer involve those data
- (b) When data is used for direct marketing. Subject must be ensured that they are aware of the existence of rights referred to in (b).
- Every person has the right not to be subject to a decision which produces legal effects concerning him which is based solely on automated processing of data intended to evaluate certain aspect relating to him such as performance at work.

Confidentiality and security of processing

- Any person who has access to data must not process them except on instructions from the controller, unless required to do so by law
- Controller must implement appropriate technical and organizational measures to protect personal data against accidental or unlawful actions
- Processing must be governed by a contract or legal act

Notification

- Controller is obligated to notify the supervisory authority, except when
 - o processing is unlikely to affect rights and freedoms of subjects

- when controller appoints a personal data protection official, ensuring rights and freedoms are unlikely affected by processing

- Member states shall take measures to ensure that processing operations are publicized.

Transfer of personal data to third countries

- Only when third country ensures an adequate level of protection.

Supervisory authority

- Each member state shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions of this Directive.
- These supervisory authorities are consulted handling matters relating to the protection of individuals' rights and freedoms with regard to the processing of personal data.
- Each supervisory authority has
 - investigative powers
 - effective powers of intervention
 - power to engage in legal proceedings in case of violations
 - has to make regular public reports on its activities
 - shall cooperate with one another to the extent necessary to perform their duties
 - members and staff of the supervisory authority have professional secrecy even after the employment has ended

The Working Party

- on the protection of individuals with regard to the processing of personal data
- has advisory status and acts independently
- composed of a representative of the supervisory authority of each state, representative of the Commission and a representative of the authority established for the Community institutions and bodies
- majority decisions of supervisory authorities
- elects its own chairman for 2 years

Does:

- (a) examines any question covering the application of the national measures adopted under this Directive
- (b) give Commission an opinion on the level of protection in the Community and third countries
- (c) advice Commission on any proposed amendment of, e.g., this Directive
- (d) give an opinion on codes of conduct

- if it finds any divergences likely to affect the protection for persons with regarding of personal data it shall inform the Commission accordingly
- It may make recommendations on all matters relating with regard to the processing of personal data in the Community
- its opinions and recommendations shall be forwarded to the Commission
- draws an annual report

Final provisions

- Member states shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest in 3 years after its adoption.
- Commission shall report to the Council and European Parliament at regular intervals in 3 years on the implementations of this Directive