



Berlin, 26<sup>th</sup> August 2015

### **The General Data Protection Regulation requires substantial improvement in crucial points!**

On behalf of the Conference of the data protection commissioners of the Federation and of the States (Länder), this is requested by the current Chair of the Conference, the data protection commissioner of Hessen, **Prof. Dr. Michael Ronellenfitsch**, as well as by the Federal Commissioner for Data Protection and Freedom of Information, Mrs. **Andrea Voßhoff**, and by the Brandenburg Commissioner for Data Protection and Freedom of Information, Mrs. **Dagmar Hartge**, at a press conference in Berlin.

With the triologue between the European Parliament, the Council of the European Union and the European Commission, the deliberations on the General Data Protection Regulation have now reached a decisive stage. For the Conference of the data protection commissioners of the Federal Government and of the Länder, it is of outmost importance that in comparison with the existing legal status, the General Data Protection Regulation guarantees an improved, at least, however, a standard of the protection of fundamental rights which is equivalent to the current one. The Conference calls on the triologue partners to take particular account of the following issues during their negotiations:

#### **1. Data economy must remain the objective of the development!**

The ubiquity of data processing and the use of big-data-technologies produce an unimaginable quantity of (also personal) data. Therefore, the principle of data reduction and data economy which has been enshrined in the German data protection law for many years is more important than ever. In order to achieve a form of data processing which encroaches as little as possible on fundamental rights, the state and the business sector have to limit themselves to what is absolutely necessary to reach their legitimate purposes, which have to be in line with the legal system. The General Data Protection Regulation therefore has to lay down explicitly the principle of data economy.

## **2. Purpose limitation must not be weakened!**

The principle of purpose limitation serves primarily the purpose of transparency and predictability of data processing and strengthens the data subjects' autonomy, as they can be confident that their data are processed only for purposes for which they were collected. In particular, the regulation proposed by the Council would permit modifications of the purposes to such a wide extent that the principle of purpose limitation contained in the European Charter of Fundamental Rights would be relinquished. This is explicitly opposed by the Conference.

The privileged treatment intended by the Council for processing data for statistical, historical and scientific purposes also encounters considerable doubt, as according to these privileges, processing which differs from the original purpose for which the data were collected is permissible almost without any restriction.

## **3. The individual's consent must secure data sovereignty!**

The right of informational self-determination means that the individual can principally decide for himself – in the form of consent – about the disclosure and use of his personal data. However, consent is only an essential element for ensuring data sovereignty if it was issued by an explicit expression of intention. Declarations of consent, which only have to be unequivocal - as proposed by the Council – are rejected by the Conference, because they are insufficient. The latter allows global service providers to claim for themselves, by using standard data protection rules and default settings which are not privacy-enhancing, far-reaching powers of data processing without the user's explicit consent. This could open the path for an opt-out-scenario as a general term of consent.

## **4. The data subjects' rights require clear regulations!**

The Conference advocates comprehensive rights of information enabling the data subjects to assess the scope and risk posed by data processing. The exercise of their rights and the measures taken for their implementation must be free of charge for the data subjects. Therefore, the Conference challenges the relevant restrictions provided for by the Council.

## **5. Creating profiles of individuals must be limited in a thorough and efficient manner!**

The Conference reminds that strict rules on the admissibility of comprehensive profiling are necessary, which will define narrow limits for compiling and analysing personal data of an individual person. The provisions now envisioned for this purpose are falling short.

## **6. Effective data protection needs data protection officials in private and public bodies!**

The data protection officials in public and private bodies, who are well established in Germany, are of great importance for an effective supervision of data protection. The Conference advocates a Europe-wide mandatory appointment of data protection officials within public and private bodies.

## **7. Data transfers to authorities and courts in third countries require stronger control!**

In the wake of the recent data protection scandals, better protection of the European citizens' personal data vis-à-vis third-country institutions is urgently required. As proposed by the Parliament, court rulings and decisions of administrative authorities in a third country, which require a data processing body to transfer personal data, shall be recognised and enforced in the EU in accordance with international agreements on mutual legal assistance only.

Further information on the data protection key issues for the triilogue negotiations on the General Data Protection Regulation is available on the website of the Federal Commissioner for Data Protection and Freedom of Information ([www.bfdi.bund.de](http://www.bfdi.bund.de)) as well as on the websites of the Länder Data Protection Commissioners (e.g. [www.datenschutz.hessen.de](http://www.datenschutz.hessen.de) or [www.lida.brandenburg.de](http://www.lida.brandenburg.de)).