

German experiences with Data Protection Officials in law enforcement agencies

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Content

- Legal basis
- System of DP control
- DPO German approach
- DPO Police obligations



Legal basis for Data Protection I

- **Lisbon Treaty (amending Treaty on EU and Treaty est. Eur. Community)**
 - Everyone has the right to the protection of personal data concerning them. (Art. 16 B)
- **Charter of Fundamental Rights of the European Union**
 - Everyone has the right to respect for his or her private life, home and communications. (Art. 8)
- **European Convention of Humans Rights (Council of Europe):**
 - Everyone has the right to respect for his private and family life, his home and his correspondence (Art. 8).



Legal basis for Data Protection II

- In order to remove the obstacles to the free movement of data without diminishing the protection of personal data, Directive 95/46/EC (the Data Protection Directive) was developed to harmonize national provisions in this field (Art. 3: shall not apply to public security, defence, State security)
 - Arts. 18 and 19: Controller must notify the supervisory authority before carrying out any wholly or partly automatic processing operation or set of such operations intended to serve a single purpose or several related purposes (incl. a general description of the measures taken to ensure security of processing)
 - Art. 20: Processing operations likely to present specific risks to the rights and freedoms of data subjects are examined prior to the start thereof by the supervisory authority following receipt of a notification from the controller



System of DP control

- **External**

- EU: Art. 28 Dir. 95/46/EC (EDPS)
- Kosovo: Art. 29 DPL

- **Internal**

- EU: Art. 18 par. 2 Dir. 95/46/EC („data protection official“)
- Kosovo: Art. 74 DPL



DP control: DPO

- **Article 18 paragraph 2 second indent of the Directive 95/46/EC provides for the appointment of a DPO, which is responsible in particular for**
 - ensuring in an independent manner the internal application of the national provisions taken pursuant to this Directive,
 - for keeping the register of processing operations carried out by the controller,
 - ensuring that the rights and freedoms of the data subjects are unlikely to be adversely affected by the processing operations



DP control: DPO

- **EU Commission publishes the**
 - „Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data {SEC(2012) 72 final} {SEC(2012) 73 final}”:
- **Art. 30: Member States shall provide that the controller or the processor designates a data protection officer.**



DP control: German scenario I

- Germany has long time experience in the field of personal data protection (first general Personal Data Protection Law in the world - 1970 in Hessen)
- German Constitution restricts legislative competence
- Federal DP Act applies to
 - Data processing in the private sector and in federal public bodies
- Federal States DP Acts apply to
 - Data processing in federal states public bodies
- But note special laws for several sectors: HR, police, social welfare, tax, health etc.



DP control: German scenario II

- Several DP Commissioners and several Laws (Federal State system)
- 9.3.2010: The ECJ ordered Germany to fulfill complete independence: C-518/07
- 16.10.2012: The ECJ ordered Austria to fulfill complete independence: C-614/10



DPO German approach

- See Arts. 4f and 4g Federal Data Protection Act (http://www.bfdi.bund.de/EN/DataProtectionActs/DataProtectionActs_node.html)
- **private bodies shall appoint in writing a DPO**
 - which process personal data by automated means,
 - where personal data are collected, processed or used by other means and at least 20 persons are employed for this purpose,
 - Unless no more than nine persons are permanently employed in the automated processing of personal data
- **public bodies may or shall appoint in writing a DPO – depending on the applicable Law**



DPO Skills and reliability

- Only persons with the specialized knowledge and reliability necessary to carry out their duties may be appointed to serve as DPOs
- May be from outside the body
- Necessary level of specialized knowledge (legal & IT!) is determined in particular by the extent of data processing and the required protection
- The supervisory authority may demand the dismissal of the DPO if he does not possess the specialised knowledge and demonstrate the reliability necessary for the performance of his duties (Art 38 para 5)



DPO Position

- directly subordinated to the head of the private body,
- shall be free to use his specialised knowledge in the area of data protection (no supervision by the controller)
- No right to intervene processing, only right to advise
- shall suffer no disadvantage through the performance of his duties
- may not be terminated for a year following the recall
- The controller shall
 - provide the DPO with an overview of the processing operations,
 - inform the DPO in good time about all relevant measures and planning with a view to personal data protection,
 - has to be made sure that the DPO can access and look into all processes related to personal data.



DPO Obligations

- monitor the proper use of data processing
- take suitable steps to familiarise the persons employed in the processing of personal data with legal provisions
- conducting of prior checking procedures
- shall make the information regarding processing operations available in an appropriate form to any person on request



DPO Police Obligations

- **To establish internal control groups!**
- To check regularly the access to registers and other data bases
- To inform the agency about infringements
- To raise awareness for Data Protection



DPO Police Obligations

- **Implement the principle of necessity!**
 - Examine your forms for unnecessary data collecting
 - Review the need for the continued storage of information no later than three years after their input



DPO Police Obligations

- **Implement the principle of traceability!**
 - Internal log-protocolling!
 - To be stored for a longer period
 - Configure the internal access to your registers in a way that ensures only authorized personnel getting access to exactly a certain part of the register („need to know“)



DPO Police Obligations

- **Secure your data!**

Against

- accidental or unlawful destruction, or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission over an network
- all other unlawful forms of processing



DPO Police Obligations

- **Implement appropriate technical and organizational measures!**
- Store personal data in a Safe
- Lock the cabinets for the files
- Lock the doors during your absence
- Cleaning ladies only during working hours
- Accompany complainants by employees
- Shredder your paper waste!



DPO Police Obligations

- **Guarantee the rights of the data subject!**
 - Create a form for answering the right of access
 - Integrate information about the data subjects rights into your website



DPO Police Obligations

- **Cooperate with and contact the**
Agjencia Shtetërore për Mbrojtjen e të
Dhënave Personale
<http://www.amdp-rks.org>
 - In case of any uncertainties about Data Protection
 - Rely on their expertise – they are the experts



Thank you for your attention !

