Main topic of the meeting: Regulation (EU) 2016/679

1. Discussion on further processing (Article 5(1)(b) and Article 6(4)) and restrictions on the rights of data subjects (Article 23)

Some MS queried whether by general national law MS can indicate processing activities which can be considered as compatible with any type of initial processing (e.g. processing for reporting criminal offences, credit scoring processing by private entities). Other MS wanted further clarification as to whether further processing is done by the same controller or can by undertaken by another controller (one MS allows currently further processing for scientific research purposes by another controller).

One MS also questioned whether it is possible to have a national law providing a general enabling clause to public administration to further process for some general objectives under Art. 23 (1), notably the protection of the data subject or the rights and freedoms of others.

COM and the majority of MS present at the meeting that took the floor considered that further processing for another compatible purpose under the GDPR applies only to processing by the original controller under the original legal basis, while a few questioned that view. In other words, further processing of personal data by another controller or for another incompatible purpose is tantamount to a new processing requiring an adequate legal basis (e.g. consent or a law). One MS enquired whether it would be possible for national law to establish a list of incompatible purposes. Several MS raised the issue of the relation between conditions for consent under Article 7 of GDPR and the use of personal data as consideration for the provision of services as provided for in the proposal for the Digital Content Directive.

With respect to the restrictions of rights, some MS raised the question on the exact content, including the level of detail of the legislative measures providing restrictions to data subject rights (Article 23 (2)). Some MS also raised the question of being able to have a general national law allowing restrictions to rights. The Commission underlined that this raises the question of the proportionality of the measures as restrictions to rights must be tailored to the objectives pursued (e.g. difference between restrictions on grounds of national security and those on grounds of enforcement of civil law claims).

2. Discussion on data protection authorities (Articles 51 et seq) and conditions for imposing administrative fines and penalties (Articles 83 and 84)

Discussion on DPAs and fines revealed that 6 MS are considering giving DPAs the power to issue fines to public administrations (on top of those 3 which already do). Some MS give or will give some additional powers to their DPAs such as the power to impose daily fines, the powers related to application of GDPR to deceased persons, to bring a case on an adequacy decision before a court on the basis of a complaint or to have direct access to the Constitutional Court. One MS queried what kind of powers authorities responsible for the supervision of processing operations of courts acting in their judicial capacity should have.
The designation of these authorities is raising difficulties in at least one MS with regard to the delimitation of their domain of competence.

Several MS will have only one DPA for both the GDPR and the Data Protection Directive for the Police and Criminal Justice authorities. Some MS will clearly divide DPAs internal organization by creating a department responsible for investigation and another one for prosecution the latter under the direction of a professional judge or prosecutor.

A clarification was also sought with regard to the duration of DPAs mandates, in particular the first appointment which could be shorter than four years. COM clarified that indeed this appointment can be shorter "where than is necessary to protect the independence of the supervisory authority by means of a staggered procedure" (Art 54(1)(d)).

One MS informed that it currently applies fines to public administrations but requires heads of the public service at stake to be directly responsible for the payment of the fine.

Some MS are envisaging criminalizing certain infringements of the GDPR.

3. Discussion on specific rules:

The rules on seeking consent from children below 16/13 years old (Article 8)

4 MS are considering establishing a lower threshold than 16 years for lawful consent. One MS questioned how different thresholds would work in practice while noticing that controllers may have difficulties in proving the age of minors and the necessary parental consent if the necessary technology is not available.

A MS enquired whether a MS may provide further requirements by national law on the conditions for valid consent and another one asked whether sensitive data are included in Article 8.

COM clarified that national law can only fix a lower threshold than 16 years old but no other conditions. The obligations to prove the age of minors and to take reasonable efforts to prove that consent has been sought from the holder of parental authority over the child are the responsibility of the controller (accountability approach of the GDPR).

Member States law requires prior consultation and authorisation from data protection authorities when processing in public interest (Article 35(10))

One MS indicated that it was considering whether the prior authorisation requests for transmission of data between two administrations to be submitted to a "Sector Committee" formed by DPAs and government members was still necessary and compatible with the GDPR requirements. COM underscored the importance to ensure the independence of the DPAs as per the GDPR and the case-law.

Member States law may require designation of data protection officer in additional cases (Article 37(4))
One MS announced it would maintain its requirement for companies to have a DPO if they have 10 or more employees.

**Member States law limiting certain transfers of specific categories of data (Article 49(5) and transfers not authorised by Union law (Article 48)**

One MS announced that it was negotiating with an International Organization with a view to conclude an agreement on transfers of inmates’ personal data. Another MS enquired whether it could maintain an existing law providing for limitations to international data transfers.

**Member States law providing for “data protection organisations” to bring collective actions (without mandate from the data subject) (Article 80(2))**

2 MS announced that they will allow for this. It was also discussed whether the consistency mechanism can be triggered by a complaint originating from a collective action and, against this backdrop, whether a national DPA from a MS forbidding collective actions would need to deal with such complaint where it qualifies as lead DPA.