

Minutes of the meeting of the Commission expert group
on the Regulation (EU) 2016/679 and Directive (EU) 2016/680

27 April 2017

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

1. Updates on the work of MS towards application of GDPR

MS provided updates on their legislative process in view of the application of the GDPR on 25 May 2018.

2. Discussion on which national law is applicable in cross-border cases (including Article 9(4) scenarios)

The exchange of views on this topic showed that reflection in the MS has further evolved. While some MS have chosen the "establishment" criteria, some other MS favour the "residence of data subject" criteria also in light of the fundamental rights dimension of the data protection legislation. The idea of possibly differentiating the scenarios in which the two criteria would apply was also raised (e.g. "residence" for Article 8 scenarios and "establishment" for other situations). The discussion will continue as MS are closer to finalising their internal deliberations on the draft laws on GDPR and Police Directive. COM will do a mapping of the situations (e.g. Article 8, 9(4)) and of the positions of MS.

3. Discussion on further processing

The core of the discussion revolved around the issue of how to tackle situations in which an initial law provides for a given task for an authority together with a given processing of personal data and another law provides for a separate task. Several MS argued that even in these situations MS will apply the compatibility criteria of Article 6(4) and arrive to the conclusion whether or not processing for this second task is compatible with the initial one. Other MS raised the issue of the need for legal certainty when based on a task public authorities transmit data among each other.

Transmission of data would be necessary for communicating possible criminal acts, threats to public security or risk situations to child welfare or social protection services. Some MS are considering providing by law that such transmission is allowed. Other MS enquired whether the legitimate interests of the controller could not be used as a legal basis for the transmission of data from the initial controller to the enforcement authorities. This issue remains to be further discussed within the group. What is key is to understand on what legal basis the initial processing took place and whether further processing can occur on this legal basis or if there is a legal obligation to process data.

Under this point a discussion also took place as to the possibility for public authorities to avail themselves of the Article 6(1)(f) legal basis for processing which is not for the performance of their tasks. COM took the view that in line also with case-law and also based on the reading

of the GDPR (in particular Recital 49) a public authority could use a CCTV system to protect its staff and property under the legitimate interest legal ground.

4. Implementation of Articles 8 (children consent Information society services) and Article 10 (processing of criminal convictions)

With respect to Article 8 it seems that some MS are considering the age of 13 years old for seeking parental consent while other MS would favour the 16 years old threshold. Political arbitrations are still ongoing in some MS. In some MS the age of 13 is not at all used as threshold for consent of children so the choice will be between 14 and 16.

Concerning Article 10, the majority of the MS that took the floor indicated they have a law concerning the processing of criminal records in a central register and that access by private parties to such information is also strictly regulated (e.g. yes/no replies as to whether there is a criminal record; indicating the possibility or not for someone to work in a given field – e.g. working with children).

5. Restrictions on the rights of data subjects (Article 23)

Some MS raised the issue of restricting the right to information or the right of access on grounds related to the interests of the controller as some MS are considering this allowed under Article 23(1)(i) "protection of rights and interests of others" while others raised the question of restrictions of rights under Union law and their compliance with the requirements of quality of law from Article 23(2).

5. Discussion on Article 96 (relationship with previously concluded agreements of MS)

COM recalled the role of this article and the obligations of MS in respect of compliance of their agreements with Union law including primary legislation.

6. AOB

Some MS requested that at the next meeting issues such as certification, research (Article 89) be discussed. At the next meeting there will also be a follow up of the discussion on "establishment versus residence" criterion.