
Comment to the intended modernization of the Council of Europe Data Protection Convention by ARGE DATEN – Austrian Society for Privacy and Data Protection.

1. INTRODUCTION

We basically appreciate the proposed modernization to the Council of Europe Data Protection Convention, certain sections do however need correction.

All in all the intended modernization does not improve the legal situation in Austria. It adds provisions to the Data Protection Convention, that have been existing law in the European Union for a long time and have already been implemented in Austria with the Federal Act concerning the Protection of Personal Data (DSG 2000).

We do however appreciate the proposed modernization for its impact on the development of Data Protection legislation outside of the European Union and for advancing harmonization of the legal status within the Council of Europe. Certain provisions of law that have been subject to arbitrary interpretation by member states so far will be concretized now.

2. THE MODERNIZATION IN DETAIL

Proposed changes on Article 2 a

The Explanatory Report to the Data Protection Convention, shall specify the expression personal data. According to the new version an individual is no longer identifiable, if the identification requires unreasonable time and effort. This must be dismissed.

The expression personal data clearly states that these data are related to an identifiable person. Whether the effort for relating these data to the individual is reasonable or unreasonable, is irrelevant, the data remain personal.

The intended interpretation is an alarming signal for decreasing the level of protection of personal data, it raises uncertainty and widens the scope for interpretation. Whether an effort is proportional or not cannot be objectively defined.

Such a misinterpretation of personal data would degrade the legal status in Austria (see Art. 2 EU-Data Protection Directive or § 4 Z 1 DSG 2000).

The interpretation however, that a person is "identifiable" if she can be distinguished clearly from other persons is an improvement to the current practice of identifying a person in terms of civil law only. This would improve the legal situation in Austria and is therefore appreciated.

Proposed changes on Article 7

The intended distribution of responsibility between controller and processor in taking security measures is ambiguous and should therefore be dismissed. The Data Protection Convention must clearly specify the controller's responsibility for taking security measures,

irrespective of the actual technical realization. Only this would be in accordance with the current EU Data Protection Directive and § 10 DSG 2000.

Proposed changes on Article 8bis

Concerning the intended data protection risk analyses, the controller's exclusive responsibility for its realization must be clearly specified.

Proposed changes on Article 8

This provision must be clarified to insure that controllers must provide detailed information on all concrete recipients of a person's personal data upon request. The reference to Art.7bis could lead to misinterpretation. The concerned person might only receive information about potential recipients and not about the concrete recipients of his or her concrete data.

Proposed changes on Article 5 -1, Article 6

The interpretation intended for the Explanatory Report must be integrated in the Data Protection Convention itself to clarify its importance and its commitment.

3. CONCLUSION

In principle we appreciate the intended changes, they harmonise the Data Protection Convention with the existing EU-Data Protection Directive and therefore the Austrian DSG 2000. Furthermore would the proposed changes improve the level of Data Protection within the European Council in most cases.

The above suggestions for improvement, especially in relation to personal data should be taken into serious consideration, otherwise our present European and Austrian Data Protection Standards would deteriorate significantly.

Because of the technologically neutral nature of the provisions, the Data Protection Convention avoids dealing with the specifications of new technologies and the subsequent potential for abuse of personal data. In this respect the Data Protection convention fails to expand personal rights in excess of the existing legal framework. The proposed EU Data Protection Act in contrary intends to find new future-oriented regulations to improve the level of protection of personal data.

An Herrn
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Wien, 28. März 2012

Betreff: Zeichen: BKA-810.141/0002-V/3/2012
Stellungnahme der ARGE DATEN zur
Überarbeitung der Datenschutzkonvention des Europarates

In der Anlage finden Sie die Stellungnahme der
ARGE DATEN - Österreichische Gesellschaft für Datenschutz
mit dem dringenden Ersuchen um Kenntnismahme und Berücksichtigung.

Für allfällige Fragen stehen wir gerne zur Verfügung.

Mit vorzüglicher Hochachtung

elektronisch erstellt

Dr. Hans G. Zeger (Obmann)

Anlage:
Stellungnahme

Alle Stellungnahmen werden unter <ftp://ftp.freenet.at/privacy/gesetze> veröffentlicht.