



June 2013  
AK Position Paper

# Draft for a General Data Protection Regulation

## About us

**The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudolf Kaske  
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm  
Director

## The AK position in detail

In view of the increasing threat to the data protection interests of consumers and employees, the development of data protection in Europe is a of utmost concern to the Austrian Federal Chamber of Labour (BAK). It supports the EU Commission in its efforts for high standard harmonised data protection, which is keeping with the times. Against this background, the BAK would like to ask you, as a Member of the European Parliament to support us in achieving this objective. The current negotiations are giving cause for concern that the right to personal data and privacy, which is embedded in the EU Charter of Fundamental Rights, has not been given the status, which it deserves in a society, which is built on democratic principles such as fundamental rights and freedoms:

The current Directive 95/46 EC contains general data protection principles, which have a "timeless" justification and therefore have to be retained widely unchanged. Our observations of the attempt of several (non-) European lobby groups to use the debate on reforms to water down the current level of protection, are therefore very critical. Europe's citizens too are closely monitoring whether they can, also in challenging economic times, trust the European Union to take historically hard-won fundamental rights seriously. This includes among other to protect the right to self-determination in respect of the use of personal data against economic commercial interests in this information taking priority

From the point of view of the BAK it would be unacceptable if a future General Data Protection Regulation would

fall behind the level of protection in 1995. With the development of technology - such as cross-border online services, scoring software for credit assessment, storage of digital traffic data, access control systems etc. - the need for protection of consumers and employees has increased tremendously of the past two decades. The data protection right can only measure up to the current challenges, if it addresses technology trends and their risk potential for privacy with as concrete and strict requirements as possible for data users. These include

- **A practice-oriented wide definition of "personal data":** attempts are currently being made to exclude data usage from the application data protection rules by declaring them not to be personal data. This approach must be rejected. In the online world, users are often indirectly identified on the basis of their IP address or the cookies on their web browser. It would be a massive retrograde state in terms of data protection rights if such data, in contrast to current jurisdiction would lose its (to be established at any time) status as a personal data.
- **Express agreement:** enterprises must be obliged to obtain the express agreement of the people affected if they intend to process their data. Linking using a service to the approval that data is processed, which is not required to fulfil the service, should be prohibited. "Legitimate interests", which permit data processing even without approval, have to be regulated in

an extremely restrictive and strict manner. Some business representatives are in favour of reversing the principles: data processing shall be allowed as long as it is not expressly rejected. However, a voluntary prior explicitly declared approval is the core of informational self-determination. The data user has to explain why processing is required and legally admissible. It would be irreconcilable with the fundamental right to data protection if a user had to justify by way of a quasi “reversal of the burden of proof”, why using his or her data, would infringe his or her confidentiality interests.

- **Data usage call for clear legal requirements and prohibitions, if a voluntary approval is not possible due to a gross imbalance of power between contractual partners:** in respect of working relationships, the freedom of will of an employee is almost negligible; hence an approval without any coercion is almost impossible. Some situations, where consumers due to a lack of alternatives are only left with the choice to give their approval to disadvantageous data protection clauses, or to refrain from making a purchase or using a service, have to be included in future. Such issues require sector specific data protection Directives (similar to the e-Privacy Directive).
- **Sectoral protective standards in case of gross imbalance of power:** for example for **employee data protection** (the EU Regulation shall apply as a binding European minimum standard also to employees and enable additional stricter national law) and for the **credit as-**

**essment of consumers** based on scoring methods, which often do not stand up to a scientific review, but discriminate against the person affected and preventing him or her to fully participate in business life.

- **Data usage only for the original intended purpose - no further usage for other purposes:** companies may only gather data they actually need at the time of the collection. This data may not be processed later for other purposes without the approval of the person affected (e.g. no accounting data for marketing or credit assessment purposes).
- **Comprehensive data protection:** data protection must not become ineffective due to countless exemptions. As outlined in the Commission draft, companies outside Europe have to comply with European data protection rules, if they provide European Consumers with free services/services against payment or if they compile personal profiles of them.
- **Effective implementation:** data protection is currently suffering from enormous enforcement deficits. Data protection authorities starved of resources, are unable to keep track of million fold and sometimes highly complex processing procedures. Improving enforcement requires independent data protection supervisors (independent of the size of a company), effective controls in the respective Member State itself (no sheer “one-stop-shop” for official competence in case of subsidiary companies), tangible penalties in case of inf-

ringements, as well as a carefully maintained register about present and future data processing. A duty to make an impact assessment by the data user and data protection friendly defaults for equipment, services and software are forward looking approaches - but only if control is not left the controlled alone. The duties of the data user and the rights of the data protection authority, as well as the review process in this context, have to be regulated down to the last detail.

The conflicts of interest in respect of legitimate confidentiality interest in data versus its commercial usability are currently intensively debated at EU level. There are comprehensible arguments on both sides. However, on behalf of the members we represent, we would urge you to consider that the General Data Protection Regulation is the drafting of a fundamental right guaranteed under constitutional law, which in fact - be it as consumer or employer - affects everybody.

We would therefore ask you to resolutely oppose any attempts to reduce the future level of protection compared to the current Directive. Of course, we also hope that you will support strong European data protection in form of strict requirements, which are in keeping with the times and significantly improved law enforcement. Please do not hesitate to contact us if you require any additional information.

Should you have any further questions  
please do not hesitate to contact

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