



Practice Group

# Data & Privacy

Data protection issues are attracting increasing attention from employers and companies in general. The steadily increasing relevance of legal discipline is not only due to the introduction of the General Data Protection Regulation (GDPR), which can be seen as an expression of increased political and official perception of data protection. Rather, the main cause of the upswing in data protection is likely to be the challenges associated with digitalization.

Digitalization is affecting almost all areas in the world of work. This creates large amounts of data. Their use represents an ever-increasing value for companies. This applies not only to customer data, but also to employee data.

Therefore, the processing of personal data and the observance of compliance guidelines is essential for employers and companies and extends into almost all areas of every company.

### **Our philosophy**

We, the Data & Privacy Practice Group of PWWL, see the tasks involved as a challenge and possibility to find solutions together with our clients that make comprehensive processing of data possible within the boundaries of the applicable law. In our view, data protection is not an obstacle but an opportunity. Our goal is therefore to support you and your company in setting up processes that comply with data protection and compliance requirements.

### **In which areas can data protection play a role in your company?**

The points of contact with data protection are particularly diverse when dealing with employee data. To get a feeling of the scope, we would like to show you just a few of the many possible topics below.

- *Data protection within the employment relationship*
  - Working time recording systems
  - Access controls through use
  - Biometric data
  - Employer access to business e-mail accounts and other IT (business mobile, laptop)
  - Work control system
- *Data protection during the recruiting process*
  - Background checks
  - Admissibility of questions
  - Applicant management tools
  - KI during the application process
- *Works council and co-determination*
  - Points of contact between works council's co-determination and data protection issues
  - Conciliation committee proceedings
  - Works agreement on the use of HR software
- *Data as operating capital*
  - Analysis and economic use of data
  - Quality management
  - Marketing
  - Research & development
- *HR processes*
  - Analysis and evaluation of HR processes
  - Documentation and storage obligations
  - Concepts for archiving, erasure, and authorization
  - Carrying out data protection impact assessment for employee data
  - Review of external service providers
  - Introduction of a data protection officer
- *Data transfer to foreign countries*
  - Evaluation and exploitation of scope of action
  - Legal Tech tools for the implementation of standard contractual clauses
- *Data protection breaches and rights of the data subject*
  - Information request pursuant to art. 15 GDPR
  - Reporting of data protection violations to authorities
  - Notification of data subject affected by a breach
  - Supervision of claims for damages under data protection law



If data protection is still completely new territory for you, we would like to explain a few fundamental ideas and principles of data protection in the following.

### **What is personal data?**

Personal data is basically all information relating to an identified or identifiable person. This can be both a client and an employee. Personal data are, for example, name and contact details. In the case of employees, personal data also includes the following

- all business e-mails and chat records;
- any relating systemic protocol or log data;
- photos, videos;
- anniversaries , jubilees and
- any other information.

### **When does processing take place?**

Processing takes place whenever one or more pieces of information about a person are collected, stored, adapted, modified, transferred, or deleted. In the case of employees, processing takes place at an early stage when application data is received, or social media portals are checked. At a later stage, processing may take place when e-mails are stored, or employee data is forwarded to third parties.

### **What must be observe when dealing with personal data?**

The protection of personal data is a consequence of the constitutionally protected general right of privacy. In order to protect the right of privacy, any processing of personal data requires justification. Additionally, the following principles must be observed for further protection:

- personal data must be processed lawfully, in good faith and in a way that is transparent for the data subject;
- they must be collected for specified, unequivocal and legitimate purposes and not further processed in a way inconsistent with theses purposes;
- the processing must be adequate and relevant for the purpose as well as limited to what is necessary for the purpose of the processing;
- it must be accurate and, if necessary, up to date;
- data are to be stored in a form that allows identification of data subjects for no longer than is necessary for the purposes for which the data are processed and
- data may only be processed in a way that ensures their reasonable security.

### **What are the consequences of a violation of data protection obligations?**

Violations of data protection regulations can sometimes have serious consequences. Violations can result in fines of up to EUR 20,000,000 or, in case of a company, up to 4 % of the worldwide income of the previous business year, depending on which amount is higher. Violations can also be punished by imprisonment or monetary fines. In addition, there is the threat of claims for damages and compensation for pain and suffering.

### **Data protection pays off**

As you can see, compliance with data protection provisions can pay off. The honeymoon period initially granted by the authorities is over. For companies and employers, it pays off to be familiar with the issues and challenges of data protection sooner rather than later. With the right approach, you as an employer can use the data for your own benefit and gain more advantages than disadvantages from it. The Practice Group Data & Privacy is happy to support you!

# Your contact person

## Data & Privacy



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