

COMP Article 4

11.10.2013

Article 4 Definitions

For the purposes of this Regulation:

~~(1) 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;~~

(2) 'personal data' means any information relating to *an identified or identifiable natural person ('data subject');* *an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person;*

(2a) 'pseudonymous data' means personal data that cannot be attributed to a specific data subject without the use of additional information, as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution;

(2b) 'encrypted data' means personal data, which through technological protection measures is rendered unintelligible to any person who is not authorised to access it;

(3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, erasure or destruction;

(3a) 'profiling' means any form of automated processing of personal data intended to evaluate certain personal aspects relating to a natural person or to analyse or predict in particular that natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour;

(4) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, ~~conditions~~ and means of the processing of personal data; where the purposes, ~~conditions~~ and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(7) 'recipient' means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed;

(7a) 'third party' means any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;

(8) 'the data subject's consent' means any freely given specific, informed and explicit indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed;

(9) 'personal data breach' means ~~a breach of security leading to~~ the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

(10) 'genetic data' means all ***personal data relating to the genetic characteristics of an individual which have been inherited or acquired as they result from an analysis of a biological sample from the individual in question, in particular by chromosomal, desoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis or analysis of any other element enabling equivalent information to be obtained;***

(11) 'biometric data' means any ***personal*** data relating to the physical, physiological or behavioural characteristics of an individual which allow their unique identification, such as facial images, or dactyloscopic data;

(12) 'data concerning health' means any ***personal data information*** which relates to the physical or mental health of an individual, or to the provision of health services to the individual;

(13) 'main establishment' means the place of establishment of the undertaking or group of undertakings in the Union, whether controller or processor, where the main decisions as to the purposes, conditions and means of the processing of personal data are taken. The following objective criteria may be considered among others: The location of the controller or processor's headquarters; the location of the entity within

a group of undertakings which is best placed in terms of management functions and administrative responsibilities to deal with and enforce the rules as set out in this Regulation; the location where effective and real management activities are exercised determining the data processing through stable arrangements;

(14) 'representative' means any natural or legal person established in the Union who, explicitly designated by the controller, ~~acts and may be addressed by the supervisory authority and other bodies in the Union instead of the~~ **represents the** controller, with regard to the obligations of the controller under this Regulation;

(15) 'enterprise' means any entity engaged in an economic activity, irrespective of its legal form, thus including, in particular, natural and legal persons, partnerships or associations regularly engaged in an economic activity;

(16) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(17) 'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State of the Union for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings;

(18) 'child' means any person below the age of 18 years;

(19) 'supervisory authority' means a public authority which is established by a Member State in accordance with Article 46.

Recitals

(23) The principles of **data** protection should apply to any information concerning an identified or identifiable **natural** person. ***To determine whether a person is identifiable, account should be taken of all the means reasonably likely to be used either by the controller or by any other person to identify or single out the individual directly or indirectly. To ascertain whether means are reasonable likely to be used to identify the individual, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration both available technology at the time of the processing and technological development. The principles of data protection should therefore not apply to anonymous data, which is information that does not relate to an identified or identifiable natural person. This Regulation does therefore not concern the processing of such anonymous data, including for statistical and research purposes.***

(24) When using ~~online services, individuals may be associated with online~~ identifiers provided by ~~their~~ devices, applications, tools and protocols, such as Internet Protocol addresses, cookie identifiers **and Radio Frequency Identification tags, this Regulation**

~~*should be applicable to processing involving such data, unless those identifiers do not relate to an identified or identifiable natural person. This may leave traces which, combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them. It follows that identification numbers, location data, online identifiers or other specific factors as such need not necessarily be considered as personal data in all circumstances.*~~

(25) Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action ***that is the result of choice*** by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data; . ***Clear affirmative action could include*** ~~including~~ by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence, ***mere use of a service*** or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.