

Austrian proposal for a provision on data protection

Article 10. Protection of personal data

Mutual transmission of personal data (hereinafter referred to as "data") between the Parties shall be carried out in accordance with the respective national law, in compliance with any conditions issued by the transmitting authority and in accordance with the following principles, which apply to the processing of data by automated and non-automated means:

a) The transmitted data shall be collected and processed lawfully and fairly. They shall be collected for specified, explicit and legitimate purposes and not be processed in a manner that is incompatible with those purposes. They must be adequate, relevant and not excessive in relation to the purposes for which they are processed.

b) Data revealing the racial or ethnic origin, the political opinion, religious or other beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a person, data concerning health or data concerning a person's sex life or sexual orientation shall only be processed if the processing is absolutely necessary and provided that the national law ensures adequate safeguards for the rights and freedoms of the data subject. The same applies to data relating to criminal offences including the suspicion of criminal offences, criminal convictions and preventive measures.

c) The transmitted data shall not without prior written authorisation of the transmitting authority be processed or onward transferred for other purposes than for the purposes of the transmission. Such authorization shall only be granted if the processing or onward transfer for these other purposes is permitted by the national law of the transmitting Party.

d) The transferred data shall be erased or rectified as soon as:

i. the data turn out to be inaccurate, or

ii. the transmitting authority informs that the transmitted data were unlawfully obtained or transmitted, or that data which were lawfully transmitted have to be erased at a later point in time according to the national law of the transmitting Party, or

iii. the data is no longer necessary in relation to the purpose of the transmission, unless an explicit authorisation allows the processing of the data for other purposes, or

iv. this Agreement ceases to be in force.

e) On request of the transmitting authority, the receiving authority shall inform about any processing of the received data and the results achieved therewith.

f) The transmitting authority shall ensure the accuracy and up-to-dateness of the transmitted data. The transmitting authority shall moreover ensure the necessity and proportionality of the transmission in relation to the purposes of the transmission and observe any limitations on transmission imposed by the respective national law. Where it appears that inaccurate data or unlawfully transmitted data were transmitted, or lawfully transmitted data have to be erased at a later point in time according to the national law of the transmitting Party, the receiving authority shall be informed without delay. The receiving authority shall carry out the necessary rectification or erasure without delay.

g) If the receiving authority has reason to assume that transmitted data are inaccurate or have to be erased, the transmitting authority shall be informed without delay.

h) The Parties ensure that data are exclusively transmitted by means of communication which guarantee adequate protection of the data against unauthorised access or modification by third parties during the transmission. The mode of transfer shall correlate with the sensitivity of the data. The Parties shall ensure that access to the used means of communication is restricted to authorised persons and shall not grant direct access to data in their automated processing systems.

i) The receiving authority shall be obliged to process the transmitted data in a manner that ensures adequate safety of the data, including protection from unauthorised or unlawful processing and from accidental loss, accidental erasure or accidental destruction.

j) The transmitting and the receiving authority shall maintain a record of every transfer, receipt and erasure of data. These records shall include the purpose, and time of the transfer and the erasure, the transmitting and the receiving authority as well as an identifier for the official who carried out and the official who ordered the request or transmission. The records shall only be used to control compliance with the applicable data protection rules. The records shall be protected with suitable measures against unauthorised use and other forms of improper use and shall be kept for three years. After this period the records shall be deleted without any delay.

k) Every data subject shall have the right, upon proof of his/her identity, to obtain from the authority responsible for processing the data free of charge and without undue delay information in an intelligible form about any data transferred or processed in the framework of this Agreement, their origin, any recipients or categories of recipients, their intended purpose and the legal basis. Furthermore, every data subject shall have the right to obtain the rectification of inaccurate data and erasure of unlawfully processed data. Moreover, the Parties shall ensure that every data subject has the right to lodge an effective complaint with an independent and impartial tribunal established by law as laid down in Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms where his or her rights to data protection are infringed and that the data subject is given the possibility to seek an effective remedy and compensation before a court. The detailed rules for the procedure to assert these rights shall be governed by the relevant national legal provisions of the Party where the data subject asserts his rights. In case of a request to assert these rights, the authority possessing the data in question gives the transmitting authority the opportunity to comment before a decision is taken.