



*Personal Data Protection in churches and religious organisation*

*Speech to a Conference organised by the Polish Inspector for Personal Data Protection, Cardinal Stefan Wyszyński University of Warsaw, Opole University and the University of Szczecin*

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Ladies and gentlemen,

Thank you to the Inspector General for Personal Data Protection, Cardinal Stefan Wyszyński University of Warsaw, Opole University and the University of Szczecin for their kind invitation to address a few words to you.

I am sorry that due to other commitments I am unable to be with you in person.

I see that you have a very full and ambitious agenda today and I would like only to highlight three aspects of the question of data protection by churches and other religious organisations:

- on the need to assume that churches are by default within the scope of EU data protection rules;
- on the need for precise and clear laws with foreseeable effects for the individual; and
- on the need for an independent supervisory authority to oversee and to enforce all personal data processing .

I represent an independent institution of the European Union.

We are responsible for ensuring compliance of the EU bodies with data protection rules. We also have a remit of advising the EU legislators on all matters affecting fundamental rights, in particular the rights to privacy and to data protection.

Together with the assistant EDPS, Wojciech Wiewiorowski, our vision is for the EU to lead by example. We want the EU to develop a new approach to data protection, which holds true to data protection principles at the same time as embracing the benefits of technology.

This means less prescriptive rules. We want all controllers, including religious organisations, to take responsibility for the details of compliance.

The guiding principles are accountability and openness.

Openness means telling individuals what is happening to their data, and allowing them to take more control over it.

That is why personal data processing by churches and religious organisations is relevant.

This conference is right to tackle this important issue.

It is particularly important because of the data in question.

Under EU law, data which reveals religious and philosophical beliefs are an example of 'sensitive data'; and processing of such data is in general prohibited, subject to certain exemptions of direct relevance to the Church.

This is recognised in the newly-agreed General Data Protection Regulation: in a minor innovation compared with the existing Directive 95/46, the new Regulation, in Article 85, will contain a specific provision on data protection rules of churches and religious associations.

I know that this is a hotly-debated topic in Poland.

Religious organisations, and not only the Catholic Church, find themselves under more public scrutiny than ever. Churches are accountable for how they handle sensitive personal information, including information about children or vulnerable members of society.

Indeed, this is an issue which touches several core values of the European Union.

Article 10 of the Charter of Fundamental Rights of the EU affirms the freedom of thought, conscience and religion, including 'the freedom to change religion or belief' and to practice alone and 'in community with others'.

The rights to privacy and to protection of personal data are included in same section in the Charter as article 10.

The right to data protection is, of course, formulated in considerable detail. It includes the right for data concerning an individual to be processed 'fairly, for specified reasons and on the basis of the consent of the person concerned or some other legitimate basis laid down by law'.

The right also gives individuals the right to access data collected about him or her, and to have it rectified.

And the right requires the rules to be subject to control by an independent authority.

These fundamental principles are valid for the Catholic Church and all religious organisations, and they have been expanded into the detailed rules of the incoming Regulation.

Moreover, the Treaty on the Functioning of the EU, commonly known as the Lisbon Treaty also juxtaposes data protection and the status of churches.

In Article 16 of the Treaty, the EU committed itself to passing laws on data protection.

Then Article 17 affirms the EU's respect for the status of churches under national law.

So Recital 128 and Article 85 of the draft Regulation now echo the Treaty in respecting and refusing to prejudice existing national laws on churches and religions associations or communities.

We should also be clear that the rights in the Charter to privacy and to data protection, like the right to privacy in Article 8 of the ECHR, apply to the individual rather than the collective.

How then to avoid conflict between norms in European law and in Church law?

First and foremost, there is no specific EU norm which excludes religious organisations from data protection law.

We must assume that any person or organisation that is responsible for the processing of personal information is within the scope of the EU's rules on data protection - unless one or more limited exception applies (like processing for purely personal or household purposes).

It clearly flows from both Articles 8 and 10 of the Charter that the individual must be free to consent to processing of data and to withdraw that consent.

In the same way, he or she must be free to choose to practice a religion or to hold a belief and to change it, or to renounce it altogether.

Moreover, churches are obviously involved in the processing of sensitive data, which reveals individuals' religious beliefs.

The new Regulation will maintain the existing exemption which allows churches and other bodies with a 'religious... aim' to process sensitive data:

- 'in the course of its legitimate activities...';
- '...with appropriate safeguards';
- '...on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes'; and
- on condition that 'the data are not disclosed outside that body without the consent of the data subject'.

Data processing can only be lawful if such conditions are met, or if other exemptions are satisfied, such as the individual having given his or explicit consent to the processing.

There is a provision for specific rules for churches. But the reach of this provision is limited: Article 85 of the draft Regulation allows existing comprehensive data protection rules for churches to continue to apply. But they may apply only on condition that they are amended to be consistent with the same Regulation.

So, by implication, if, at the time of the EU Regulation's entry into force, a Member State does not have any such comprehensive rules for church data processing, we should assume the Regulation will apply in its entirety.

Secondly, specific public laws on personal data processing by the Church must be precise and clear.

Case law on human rights in both the Court of Justice of the EU and the European Court of Human Rights in Strasbourg consistently underlines the need for foreseeability.

Where there is a difference between the rules in the new Regulation and national approaches as regards processing by churches, then those differences should be clearly set out in the law - that is, to be precise, in public law.

Citizens must be able to predict the effect of a law, especially where the law may interfere with their fundamental rights.

And finally, data processing must always be subject to independent oversight and enforcement.

Like Article 8 of the Charter, the new Regulation will specifically require an independent supervisory authority to oversee the processing of personal data by the church.

This authority does not necessarily have to be the national data protection authority like the GIODO.

But the authority must conform to all the Regulation's prescriptions for a national DPA, in terms of independence, competence, tasks and powers.

It's worth repeating: this authority must be independent, and be competent to carry out the tasks of a data protection authority.

Ladies and gentlemen,

I am sure that your discussions today will help illuminate this area, not just in terms of the national debate in Poland, but for Europe and beyond.

I look forward to hearing the outcome of today's event, and I wish you a successful conference.