

Legal Basis:

CRITERIA FOR MAKING DATA PROCESSING LEGITIMATE



EUROPEAN DATA
PROTECTION SUPERVISOR

Delphine Harou



Article 5 (a)

- Personal data may be processed only if:
 - processing is necessary for the performance of a task carried out in the public interest (i) (**necessity test**),
 - on the basis of the Treaties or other legal instruments adopted on the basis thereof (ii) (**legal basis test**) or in the legitimate exercise of official authority vested in the European Union institution or body or in a third party to whom the data are disclosed (iii),
 - » (I) and (II) or (III) are **cumulative**



Article 5 (b)

- Personal data may be processed only if:
 - Processing is necessary for compliance with a **legal obligation** to which the controller is subject,
 - » National law:
 - Security
 - Safety at work



Article 5 (c)

- Personal data may be processed only if:
 - Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a **contract**

Article 5 (d)

- Personal data may be processed only if:
 - The data subject has unambiguously given his or her **consent**,
 - » The consent should usually not be the sole justification for a processing and be considered as a complementarily ground for the lawfulness of a processing operation,
 - » The consent must be "freely given". In an employment relationship, the data subject might fear to be treated differently if he does not consent to the data processing

Article 5 (e)

- Personal data may be processed only if:
 - processing is necessary in order to protect the **vital interests** of the data subject
 - » In very few cases only, the vital interests of the data subject is the ground to legitimise the processing operation. The vital interest was used in the case of the crèches



The processing of **special categories of data** requires further guarantees

- Article 10 (1) states that the processing of special categories of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and of data concerning health or sex life, are prohibited. **Unless:**
 - (a) the data subject has given his or her express **consent**
 - (b) processing is necessary for the purposes of complying with the specific rights and obligations of the controller in the field of **employment law** insofar as it is authorised by the Treaties
 - (c) processing is necessary to protect the **vital interests** of the data subject



Article 10 (4) and (5)

- 4. Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy
- 5. Processing of data relating to offences, criminal convictions or security measures may be carried out only if authorised by the Treaties or other legal instruments adopted on the basis thereof or, if necessary, by the European Data Protection Supervisor, subject to appropriate specific safeguards



EUROPEAN DATA
PROTECTION SUPERVISOR

