

Processing on behalf of the controller

Joint control under Regulation 45/2001



EUROPEAN DATA
PROTECTION SUPERVISOR

CONCEPT OF CONTROLLER

Definition in Art.2(d) - autonomous concept intended to allocate responsibilities (**WP29 – Opinion 1/2010**)

- ❖ It is the institution/agency which shall be considered as ultimately responsible for data processing and obligations
- ❖ A person may be designated, but will act on behalf of the institution/agency



A specific identity is important:

- ✓ as interface/contact person for the data subjects' rights
- ✓ to ensure data quality (according to Art.4(2)),
- ✓ full compliance with data protection principles,
- ✓ Transparency

But ultimate responsibility lies with the institution/agency!



CONCEPT OF PROCESSOR

Definition in Art.2(e) - Its existence and lawfulness is determined by the mandate given by the controller (**WP29 – Opinion 1/2010**)

2 conditions for being a processor:

- ❖ External separate entity
- ❖ Processing data on behalf of the controller



EXAMPLES OF EXTERNAL OUTSOURCING

- **the Commission's medical service** acts as processor to an agency and the processing is governed by a SLA,
- **an external medical centre** carries out some or most of the medical exams on behalf of an agency and
- **the medical advisor** processes medical data at the agency's premises on behalf of an agency
- **an insurance company** reimburses data subjects in case of accident/occupational disease by processing medical data on behalf of the EP and Council

JOINT CONTROL/CONTROLLERSHIP

Large scale IT systems

The Custom Information system (CIS) case

✓ OLAF and the competent authorities in the MS are co-controllers.

Why?

Some of the tasks of a controller cannot be fulfilled by OLAF.

The uploading and amending of data, the decision on whether or not to extend storage for CIS cases, is done by the competent authorities in the MS + They are the only ones capable of changing data uploaded by them so the right to rectification (incumbent on the controller, Art. 14) is to be ensured by them + They are the one authorising transfers to third countries.

Competent authorities cannot be regarded as mere users of the system. Their decisions have significant impact on the purposes of the processing.

CIS mirrors other large-scale IT systems such as EURODAC in which the Commission is responsible for the setting up and the operational management, but not for the actual content of the data uploaded to the system:

- ✓ OLAF sets up the system, gives concrete form to the authorisation in the legal basis: it partly determines the means and purposes of processing.
- ✓ So do the competent authorities of the MS.

Each controller is responsible of its own processing operations.



Article 23

Processing of personal data on behalf of controllers REQUIREMENTS

The contract or legal act binding the controller and the processor should include that:

- the processor shall act only on **instructions** from the controller (Article 23(2)(a));
- the obligations with regard to **confidentiality** (Art.21) and **security** measures (Art.22) should be incumbent on the processor (Article 23(2)(b))
- **unless** the processor is subject to a **national law of one of the M.S.**, then by virtue of Article 17 (3), second indent, of Directive 95/46/EC, those obligations are incumbent on the processor (Article 23(2)(b)).

ARTICLE I.X-DATA PROTECTION

“Any personal data included in or relating to the Contract, including its execution shall be processed pursuant to Regulation 45/2001...It shall be processed solely for the purposes of the performance, management...**The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete.** Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the institution/agency. **The Contractor shall have the right of recourse at any time to the EDPS**”.

- ❖ Mere reference to the contractor's personal data and right of access to them is not sufficient
- ❖ Data subjects should also be included since part/all of their data are processed by the processor within the execution of the contract
- ✓ Where there is reference to “the Contractor”, institutions/agencies should add the phrase “and the data subjects whose data are processed by the Contractor”

CONCLUSIONS

- The determination of purposes, means, joint/single control stem from legal and factual circumstances
- Need for clear and unambiguous designation of controllers/processors in a written agreement
- Need for clear and specific allocation of responsibilities
- The controller(s) remains responsible on substance: (Lawfulness, quality, retention, transfer, notice, rights, security)
- The controller may allow the processor to choose the most suitable technical and organisational means



EUROPEAN DATA
PROTECTION SUPERVISOR



Any questions?