



## **ETUC response to the Communication from the Commission “A comprehensive approach on personal data protection in the European Union”**

ETUC wishes to use the consultation on data protection in the European Union in general in order to underline the need of the **protection of workers personal data** and reiterate its demands in this field. **We deplore the absence of the specific dimension of the employment sector and specific rules in the current communication. The Commission does not present any proposals guaranteeing the respect of the private life at the workplace in the framework of an employment relationship or in the framework of a mandate for worker representatives.**

ETUC believes that the protection of personal data and the protection of privacy of workers in the employment relationship is an issue of high importance, seen the changes information and communication technologies have brought to the workplaces. The boundary between working and private life is blurring more and more, due to the technological development, but also because workers to some extent do their work from home. For example badges, control cameras, mobile phones, etc. as well as certain forms of work such as telework and tele-cooperation are elements of virtualization of work, which imply at the very same time new possibilities of control of the workers.

Effective data protection is a fundamental right of any human being, which needs to be respected. It is laid down in Article 8 in the Charter of Fundamental Rights. The ILO has specific guidelines in relation to data protection in the employment relationship; as well as other international treaties and national constitutions. ETUC believes that European rules on data protection for workers would improve the working conditions in Europe (Art. 151 TFEU).

Data protection in the employment relationship was part of the European social partners work programme in 2003 but this did not lead to any agreement. The Commission should use this renewed opportunity on the topic in order to prompt the social partners to negotiate on the matter.

A European framework of common rules would allow building a coherent, consistent and comprehensive response on the experiences of different Member States. An increasing number of workers are working for companies or organizations having establishments or subsidiaries in more than one country. A more consistent protection of workers' personal data throughout the EU is necessary for the following reasons:

- legal clarity and certainty (an essential element of better regulation); as currently there is not only much variation in the way the European countries provide protection of workers' personal data, but also in the degree of protection
- the growing number of transnational mergers, take-overs and acquisitions and an increasing number of employees working for companies or organisations that have establishments or subsidiaries in more than one country.

Taking the first two points together this leads to a situation which prevents workers and employers from being fully aware of their specific rights and obligations. This is bad for the respect of the fundamental rights and freedoms of the workers concerned and bad for business.

- a more consistent and homogenous application of the rules governing the protection of individuals' fundamental rights and freedoms in this regard,
- the specificity of the employment relationship and the weaker position of workers,
- recent technological advances and their application in the workplace,
- the growing tendency of multinational companies to concentrate personal data of all employees in one country and therefore undermine national participation rights of employees in the field of data storage, handling and processing

For ETUC the main features for data protection of workers on European level should include the following:

- Principle of the responsibility of the employer to respect data protection, comparable to the responsibility of the employer for health and safety at the workplace
- The prohibition of targeted monitoring and control at the workplace
- The rights of worker representatives in the process of data collection, of storing and processing needs to be assured; this implies questions of access to electronic communication facilities; protection rules should apply to the communication between workers and their representatives; as well as between representatives
- The creation of occupational data protection agents would be a real achievement
- European Works Councils should also be given a more prominent role in data protection issues in cross-border situations
- The protection should be valid from the moment of application for a job, during the employment relationship up to the data kept after termination of the employment relationship

- No access on personal related data when using modern means of communication
- The data processed needs to be directly relevant and necessary to the employment relationship
- Effective limitations to the access to among others the results of medical examinations or genetic data or alcohol and drug tests
- Rules are needed to guarantee data protection when data is transferred across borders
- Issues which would need to be covered in order to protect the workers' personal data in the employment context are e.g. the scope of the processing of these data (also manual processing), the role of consent (limited), the data quality, drug and alcohol testing, intrusions into the lifestyle of workers; monitoring of worker's emails or internet use, the right of access to personal data, the exclusion of the use of any personal data collected illegally, the use of GPS-tracking devices, etc.

ETUC puts strong question marks concerning the Commission's proposal on the encouragement of self-regulatory initiatives. Those cannot be used as a way to circumvent legal obligations, as might be the case when wanting to simplify administrative procedures.

ETUC can support some of the proposals made by the Commission in the general framework by applying them to the employment field:

- the Commission's call for "a strengthened institutional framework for effective enforcement of data protection legislation". ETUC would in particular like to see a strengthening and enhancement of national data protection authorities. National authorities are often understaffed and cannot devote their scarce resources to employee-related data protection issues. It would be very helpful if the authorities were equipped with powers similar to that of labour inspections.
- ETUC welcomes the introduction of the principle of transparency for the processing of personnel data
- ETUC certainly agrees with the Commission on the need for more effective remedies and sanctions (e.g. the general duty of disclosure concerning breaches on data protection), including enforcement cross-borders. It would be a great improvement if

for instance trade unions could represent individuals and bring an action before the national courts.

- Making the appointment of an independent Data Protection Officer mandatory and harmonizing the rules related to their tasks and competences. In addition it would be advantageous to provide at European level adequate training standards for such officers.

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