Council of the European Union

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NOTE

From:	German delegation
To:	Working Group on Information Exchange and Data Protection (DAPIX)
Subject:	General Data Protection Regulation
	- Processing in the employment context

COURTESY TRANSLATION PROVIDED BY THE GERMAN DELEGATION

The protection of employees' personal data is an elementary and indispensable component of labour law. Labour law regulations and thus also the regulations concerning the protection of employees' personal data are understood as special rights and protection rights in favour of the employee as the weaker party and accordingly interpreted by the jurisdiction of the labour courts.

European labour law in general only defines minimum standards for Member States' legal frameworks. This continues to be based on the principle that Member States must not fall short of an established minimum level of protection while at the same time they are not prevented from prescribing a higher level of protection for their employees. In order to maintain the systematics of the European labour law in the framework of the General Data Protection Regulation, it is necessary to add an opening clause to the wording of the Regulation which will ensure that the standards set out in the Regulation are also applicable in the field of employment while, at the same time, enabling Member States to maintain or establish higher levels of protection. This must also be possible through collective bargaining agreements.

According to information provided by the Commission in the DAPIX, collective bargaining agreements shall be covered by Art. 6, paragraph 1 (c). However, this still remains unclear and can neither be derived from the wording nor from the corresponding recitals. Germany is therefore of the opinion that this must explicitly be mentioned in Art. 82.

Furthermore, the particularities in the context of employees' consent must also be taken into account (the following proposal for a paragraph 3 therefore also depends on the further development in Art. 7).

In addition it must be ensured that the special processes and legal procedures can be maintained in the employment context.

Based on these considerations, the following regulation concerning the protection of employees' personal data is suggested:

Article 82
Processing in the employment context

1. Member States may by law provide for more specific rules or for stricter rules for the protection of employees in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace , health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship. These rules must not fall short of the level of protection of this Regulation; they may provide for a higher level for the protection of employees.

2. Member States may by law provide that the processing of employees' personal data in the employment context can also be regulated through collective agreement (collective bargaining agreements, works agreements). These collectively agreed rules must not fall short of the level of protection of this Regulation; they may provide for a higher level for the protection of employees.

3. Member States may by law determine the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee.

4. Member States shall also have the right to maintain or create rules for law enforcement through authorities and courts that derogate from this Regulation.

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