

Germany – Data Privacy

Germany, as a member of the European Union (“EU”), was required to implement the EU Data Protection Directive 95/46/EC (the “Directive”) into its national legislation. The Directive was implemented in Germany in May 2001 pursuant to an amendment of the German Federal Data Protection Act.

Collection and Processing of Personal Data	
<i>Compliance Alternatives</i>	<p>Due to the “Policy for Employee’s Data Privacy (<i>Grundsatzregelung zum Datenschutz der Arbeitnehmer</i>)” which came into effect Sept. 1, 2009, collecting, processing and transfer of Personal Data has been based upon new rules.</p> <p>The collection and processing of personal data in connection with an employment relationship is only allowed if it is necessary to constitute, to perform or to determine the relationship. However, these restrictions do not apply if the employee consents.</p> <p>Beside this, personal data can be collected and processed if it is necessary to unveil any crime of the employee in connection with the employment relationship.</p> <p>For any other reason the collection and processing of personal data is allowed where: 1) the employee consents; 2) it is necessary to safeguard the valid interests of the employer and the employee does not have an overriding legitimate interest to exclude the data; 3) the data is generally accessible, or the employer has the right to publish the data, unless the employee’s legitimate interest in precluding the data clearly outweighs such interest; 4) it is necessary to protect public interests and the legitimate interest of a third party, and the employee does not have a legitimate interest in the data being excluded; or 5) permission exists under national law (e.g., collective labor agreements).</p> <p>When processing sensitive data (e.g., racial or ethnic origin, political opinions, party affiliation, and religion), the employee’s explicit consent is required, unless such data is necessary to pursue or defend against legal claims, or it concerns health data related to any sick leave taken by the employee.</p> <p>Please notice that due to the new legal regulation the legal situation is unclear; it is advisable to obtain German legal advice on a case-by-case basis.</p>
<i>Disclosure/ Registration</i>	<p>An employer must appoint a data protection official if there are more than nine employees in Germany involved in the “automated processing of data” (which includes the processing of data by computers). The data protection officer can be an in-house employee, should not be a member of management, should be in an independent position to ensure company compliance with German data privacy requirements, and should “qualify” by attending some seminars on data protection that are readily available in Germany.</p>
<i>Other Requirements</i>	<p>None applicable.</p>

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company’s equity based compensation plans. With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

Transfer of Personal Data

<i>Compliance Alternatives</i>	<p>Only if an employer in Germany does not appoint a data protection officer, it must register with the data protection authorities if it automatically processes and transfers data (including within Germany). To register, the employer must complete and submit a simple form to the local data protection authority (e.g., if the company resides in Hamburg, the data protection authority of Hamburg would be the relevant local authority). No fee is required. No approval by the authorities is required. The form generally calls for information that includes the following: name and address of company; managing person of company; names of person(s) involved in the processing of data; purpose of processing and use of data; the group of persons affected by the processing of data; if data is transferred within or outside of Germany, the name of the transferees; and information on how the data is kept secure (technical measures taken to ensure that the data cannot be stolen, etc.).</p>
	<p>The cross-border transfer of personal data from Germany to non-EU/European Economic Area (“EEA”) countries is permitted where: 1) such countries provide an adequate level of protection, or 2) the employee consents (however, many scholars argue that a consent of an employee is insufficient); or 3) it is necessary for the performance of an employment contract; or 4) it is necessary for a contract between the employer and a third party that is in the interest of the employee; or 5) it is necessary or legally required on important public interest, or for the establishment, exercise or defense of legal claims; or 6) it is necessary to protect the vital interests of the employee; or 7) the data is from a public register.</p>
	<p>The transfer of personal data from Germany to non-EU/European Economic Area (“EEA”) countries is also permitted to the extent that the data transferor and transferee have entered into the European standard contract for cross-border data transfers. Alternatively, non-standard contracts or codes of conduct are acceptable, provided they contain adequate safeguards with respect to privacy rights and the exercise of associated rights, and if the data transfer operation or particular categories of transfer operations according to the contract or codes of conduct have been approved by the competent supervisory authority. For the transfer of data to the US, Germany views compliance with the US/EU Safe Harbor principles as compliance with the cross-border transfer law in Germany.</p>
<i>Other Requirements</i>	<p>It is not permissible to transfer employee data to any trade union in order to enable the trade union to collect debts, or to any insurance company for advertising purposes.</p>

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