Abstract

Since May 25th of 2018 the General Data Protection Regulation (GDPR) is governing the relationship between internet users and data processors in great detail. The processing of employee data in the workplace, however is only marginally regulated in art. 88 GDPR. Driven by the practical need for GDPR-compliant data protection regulations, numerous scholars lend significance to this normative vacancy and argue its purpose.

So far this discussion overlooks collective bargaining agreements as a means of designing data privacy concepts for the workplace. Especially the potential – and limits – of collective and works council agreements to create an appropriate level of data privacy throughout the European Union has yet to be researched. Employers depend on employee representatives to implement privacy concepts – otherwise they risk facing fines for lack of GDPR-compliance. These fines do not only impose a risk for employers: Employee representatives and works council members can also be targeted by supervisory authorities for unlawful data processing. Hence researching legally secure options aimed at shaping the GDPR for the workplace through collective agreements is in the interest of all the collective partners; the threat of million euro fines could stimulate negotiations in general.

Due to the vague language and differences in legal traditions the margin of deviation from the GDPR is highly controversial – to this end, the first step of this paper is to analyze the discussion held so far. What collective agreements are available to the collective partners in the member states under art. 88 GDPR? What national restrictions must be observed? Subsequently, this study focuses on the acceptable degree of deviation from the GDPR provided for in art. 88 DSGVO.

This research reviews the current legal discourse and finds it to be pseudo-argumentative. The dispute about a permissible scope for reshaping the GDPR presupposes the determination of the relevant level of protection of the DSGVO: Without knowing what one wants to preserve, it is pointless to argue about whether one may deviate from it. With this in mind, the legal dispute is defused. The majority of legal scholars agree, that deviations are permissible as long as they adhere to art. 5 et seq. GDPR and do not contradict the art. 12 et seq. GDPR. Applying *Robert Alexy´s* Theory of Principles this dissertation further specifies the principal level of protection in art. 5, 6, 9 GDPR.

Moreover, this paper examines the discretionary scope of collective bargaining parties, which allows for a limited degree judicial scrutiny of collective bargaining agreements by courts in the European Union. While maintaining the principal level of protection Art. 88 GDPR, this dissertation develops the "*Concept Review*" ("*Gestaltungskontrolle*") as a roadmap. The "*Concept Review*" allows for collective bargaining parties to ascertain if their provisions risk a higher or lower degree of judicial scrutiny, depending on which Articles of the GDPR they wish to deviate from and – if necessary – which measures are implemented to ensure the maintenance of the principal level of protection. Categorized by the level of risk for the principal level of protection this paper presents several permissable collective bargaining clauses according to the "*Concept Review*". In summation the "*Concept Review*" allows collective bargaining parties to adhere to the GDPR as faithfully as possible, while adapting data protection rules to the reality of the workplace as freely as necessary.