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Personal data traversing organisational borders: legal issues,

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Personal data

- As defined by the directive 94/46/EC, wide scope
- The responsible part «the controller» is a key term
- Sending data from one entity to another will have different implications depending on whether or not the controller is the same.



Key concepts – EU personal data

- Personal data
- Processing
- Legal grounds for processing
- Sensitive data
- General responsibilities for the controller
- General and specific rights for the data subject



Using data processors

- The use of subcontractors (data processors) is more or less unproblematic within the scope of the directive. However, two important points must be emphasized:
 - There must be a written agreement
 - The controller bears the responsibility for the data processors actions (you can reduce liability in civil matters by contract-based indemnification clauses, but you cannot escape criminal liability).



Transferring data to a new controller

- If the processing is to be made by a new controller, additional rules come into play. This will be a new processing.
- First of all, there must be legitimate grounds for processing.
- Other dutys: information to the registered individuals and the ability of them to protest, right of access.



Purpose

- The intended purpose of the original processing must be taken into account. Data from one processing cannot be used for another processing if the purpose of this new processing is incompatible with the purpose of the first one.
- If this is the case, the new processing is illegal. This cannot easily be repaired by good solid grounds for processing - the data should then be gathered again, from the registered individuals (or another source)
- (Can consent repair this? Probably not, because that would undermine the rule).



Trans-border data transfer

- Transfer of data to a third country: If on the list of "adequate level of protection", its OK – the same as inside EU. If from the US, should be on the «Safe Harbour» list. <http://www.export.gov/safeharbor/>
- If from another «third» country, this is problematic, again consent can be key, as well as situations where it is «necessary» - similarities to the grounds for processing.



Choice of law

- General rule (from the directive) is that one has to abide by the rules of the country where the controller is located, as well as the rules in the country of the controller (if from EU countries) has an established presence.
- If no EU controller exists, he/she has to have a representative in the country where the processing will take place.



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Questions?