



Response of the ETUC to the  
"Communication from the Commission. First stage consultation of social  
partners on the protection of workers personal data".

The ETUC believes that the protection of personal data and the protection of privacy of employees is an issue of big importance already now and is becoming ever more important, as Information and communication technologies are further developed and increasingly used in the working life. The boundary between working life and private life is blurring out, due to the technological development, particularly in the field of information and communication technology, but also because some workers to some extent do their work from home. Telework and tele-cooperation are elements of virtualisation of work, which imply at the very same time new possibilities of control of employees.

The Internet is more and more used in daily work. More and more employees are busy with collecting, processing and storing data. They leave traces and information behind that can be used to build up an image of their personality, the way they work and the particular manner by which they collect or process data. The amount of personal data that is available is increasing evermore and so is the possibility to connect this data. In almost every company using information and communication technologies to some extent, the data available are so complex and huge that one can build up comprehensive personal profiles of employees that give deep insight into many aspects of their personality.

Electronic keys and chip cards get more and more common. They open up hitherto unknown possibilities of collection of data and of control of employees. The possibility is there to follow every step and every move employees are doing inside companies and to control these steps, and often this happens even without the knowledge of the employees.

Effective data protection is a basic democratic right of any human being. Apart from that, data protection has another important function in the working environment. In the world of work, data protection builds up trust between persons, establishes confidence between the different hierarchical levels in a company and thereby encourages creativity. Good data protection is one element facilitating innovation. As work is more and more based on the transmission and processing of information, the role and importance of data protection is evident.

A European regulation concerning data protection of employees is in indispensable element of modern employment relations. We suggest that in addition to a regulation, which is absolutely necessary, the Commission reflects on supplementary forms for promoting data protection, such as an audit or a quality label.

- 1. Do the provisions laid down in Directive 95/46/EC and Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector, adequately address the protection of workers personal data?*

The ETUC believes that both Directives do not offer sufficient protection of privacy. The principle of consent is not strong enough to offer adequate protection. In almost all cases employees are in a weaker position, than the employer and may therefore be forced to give their consent that data is given to the employer, although they actually would prefer to keep that data private. There are many aspects of data protection of employees that are not covered by both Directives.

- 2. Do current national rules, implementing Directive 95/46/EC and Directive 97/66/EC, deal with this issue to an extent satisfactory to both the worker and the employer?*

The ETUC does not think that current national legislation implementing Directive 95/46/EC and 97/66/EC deals with data protection of workers to a sufficient extent. Partly because current national legislation does not fill in the gaps existing in both Directive and partly because national legislation not always is consistent even with the limited objectives of both Directives.

- 3. Do you consider it advisable to take an initiative in this area? In particular, do you think that the absence of a specific body of provisions in this field has an adverse impact on worker and or/the employer?*

The ETUC believes that there is a need for regulation in this area in order to protect employees. The absence of specific provisions regulating the particular problems arising in employment relations and for people looking for employment has many adverse impacts on workers.

- 4. If so, should this initiative be taken at Community level?*

As the problem is the same in all the Member States, initiative should be taken at Community level.

- 5. If so what form do you think Community action would have (directive, communication, recommendation, code of practice, guidelines, etc.)?*

The ETUC thinks that the best form would be a Directive. Protection of privacy of workers is a fundamental right and should be covered by a Directive, so as to assure the necessary protection for all workers. The Directive should leave room for adaptation to national situations and national traditions. There is a need for additional instruments and some of the issues require flexibility, local adjustment to legislation.

*6. What should the main features of such a measure be?*

Without aiming at completeness, the ETUC suggests that the following areas should be covered by a European regulation

- RESPONSIBILITY OF THE EMPLOYER

Any European regulation should establish the 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.

- RIGHTS OF WORKERS AND THEIR REPRESENTATIVES

The rights of workers representatives in the process of data collection, of storing and processing data should be improved. Workers representatives need adequate legal instruments to care for the implementation of data protection and to guarantee the privacy of employees. Worker representatives should have access to all electronic communication facilities existing in the company. Data protection and protection of privacy covers as well the privacy of communication between workers representatives or workers and their representatives via the web. Such a communication should not be disclosed to the employer or controlled by the employer. Teleworkers should have the right to a free and uncontrolled communication with the worker representation.

- COVERAGE OF EMPLOYEES IN THE PRIVATE AND PUBLIC SECTOR

Any European regulation should guarantee the protection of employees in the private and the public sector.

- GENETIC TESTING

There is a need for regulation concerning medical data, drug testing and genetic testing. The ETUC believes that genetic testing (screening) should not be used as pre-employment test, this should be completely forbidden. Genetic screening based on a predictive assessment of an individual's predisposition or susceptibility should be declared illegal. If genetic monitoring is relevant for particular jobs and there are reliable tests and competent personnel to carry out the testing, the employees might be offered such testing on a voluntary basis. The employer shall however not have the possibility to impose such testing on the employees. The results of such tests should be the property of the employee alone, and the employee alone should control the use of the test results.

- ALCOHOL AND DRUG TESTING

A European regulation should deal with alcohol and drug testing at the workplace. The ETUC does not see the need for general compulsory testing of employees and is quite critical on the practical effect of such testing. The result of such testing is often what is already known in the company and too often such testing is used as alternative for drug and alcohol prevention at the workplace.

- MEDICAL DATA

We see a strong need for the protection of medical data of employees and job applicants. We think that the employer should only be informed whether the worker is fit to work or not. Further information, above all information containing detailed medical data, should not be given to the employer.

- PROTECTION OF JOB APPLICANTS

It is particularly important for an employer to get information concerning applicants, whereas employees looking for an employment are particularly vulnerable and maybe forced to reveal much more data than they actually want to reveal. Employers shall get such data only from the job applicant himself. Employers shall be allowed to request additional data from third persons only with the specific consent of the job applicant. Any such data on the job applicant should be

deleted immediately after the application is turned down and should not be stored, as is far too common practice now.

- CROSSBORDER WORK

There should be rules guaranteeing data protection if companies are transferring data across the borders, if they are transferring services to other countries or are contracting services from companies abroad, beyond the European Union. Even the best regulation on data protection in a company is eroded, if the data are transferred afterwards to countries where data protection is less strict.

- PERSONAL FILES

In many countries there are rules concerning the information the personal files of employees may contain. These rules need an updating with a view to technological development and the consequences the implementation of Information and communication technologies has for employment relations.

- CONTROL OF EMPLOYEES

With information and communication technologies the option is there for a permanent, automatic control of almost any activity and any movement of employees. The technical possibilities are there to control in real time any activities of any employees without the employees themselves being aware that they are controlled. Such forms of control should be ruled out in a European Directive.

WB/16.11.2001