

CO.29 Political Activities

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Last update: 2021-05-25 00:06:53 | By: Winfried Veil

Created at: 2021-05-12 12:14:46

The GDPR hardly takes into account that processing of personal data is an essential part of political debate and thus a functional prerequisite of the democratic system.

Only [Art. 9 II d GDPR](#) provides a legal basis relevant to political activities. According to this, the processing of sensitive data is permissible if it is

“carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects”.

This very narrow legal basis, tailored exclusively to members and "sympathisers" of organisations, is the only provision of the GDPR that is explicitly related to the political process. It does not take into account that the monitoring of political competitors and the processing of personal information in this regard and the public dissemination ("disclosure") of information can be an essential part of legitimate, democratic opinion campaigns and, in particular, the information obligations and data subject rights that contradict this can simply be incompatible with this. With regard to their members, political organisations can defuse these conflicts by means of statutes and resolutions, as these are legally to be regarded as "contractual" agreements within the meaning of Article 6 I b GDPR. This cannot be achieved to the same extent with regard to third parties who do not have a special relationship.

[Rec. 56 GDPR](#) still contains the following provision:

“Where in the course of electoral activities, the operation of the democratic system in a Member State requires that political parties compile personal data on people’s political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.”

However, the German legislator has not made any further provisions on this, nor on the form such

"guarantees" should take.

In the absence of provisions adequate to fundamental rights, therefore, to enable the political battle of opinions, there must be direct recourse to the fundamental rights that are par excellence constitutive of democracy: freedom of expression [[Tile CO.09](#)], freedom of information [[Tile CO.10](#)], freedom of the media [[Tile CO.11](#)], freedom of assembly and association [[Tile CO.12](#)].

Insofar as the EU legislator, for its part, again leaves the detailed design to the national legislator, the mere omission of corresponding legislative activity, as is currently the case in Germany, proves to be problematic for the democratic will-forming process, especially by parties and other political organisations.