



KT | **KNYRIM.TRIEB**
RECHTSANWÄLTE

DATA TRANSFER AND DATA PROTECTION ISSUES

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- The **era of digitally enhanced farming** with generating new data and upcoming possibilities for aggregating and analyzing data (e.g. Internet of Things, BigData) comes along with an **increasing interest in data itself and a demand for merging and exchanging data** as well as processing data by third parties
- The **General Data Protection Regulation (GDPR)** unifies and strengthens data protection and privacy for individuals
- The GDPR is **directly applicable and comes into force by May 25th 2018 in all members states of the European Union**
- The GDPR has to be taken into account by third countries or international organizations, if personal data of EU-citizens are processed
- Fines up to 20 million Euro or 4% of worldwide annual turnover (Art 83 GDPR)

Clarification within projects ADDA and „Electronic herdbook“



- **Discussions** over „**Who owns the data?**“ and, related, „**Who may use which data for which purpose?**“ are an impediment to further development of preventive measures in cattle breeding.
- **Clarification** within Austrians projects “ADDA – Advancement of Dairying in Austria” and “Electronic herdbook” – of legal impacts and requirements for merging data from various data sources.



Fundamental principles of data processing determined by GDPR



Datenschutzrecht. Jahrbuch 2016

Das Jahrbuch Datenschutzrecht 2016 enthält - wie jedes Jahr - zahlreiche Beiträge zu den ganz aktuellen Fragen des Datenschutzrechts, diesmal ua zum neuen „EU-US-Datenschutzschild“, zur Datenverarbeitung im Zusammenhang mit „Smart Cars“, der biometrischen Gesichtserkennung und der Steuerung des Datenverkehrs im Internet. Einen weiteren Schwerpunkt bildet das Thema „Big Data“ und Datenschutz. Ausführlich besprochen werden die Aufhebung des Widerspruchsrechts in § 28 Abs 2 DSGVO durch den VfGH und das fundamentale „Google Spain und Google“-Urteil des EuGH. Besonders hervorzuheben ist schließlich noch ein fundierter und dennoch kompakter Überblick über die wesentlichen Inhalte der kommenden Datenschutz-Grundverordnung (DS-GVO). Abgerundet wird das Jahrbuch durch eine praktische und aktuelle Judikaturübersicht zum Datenschutzrecht in Form von systematisch geordneten Leitsätzen.

Knyrim, R. and E. Dolamic. 2016. Datenschutzrechte in der Rinderzucht. Datenschutzjahrbuch, 11/2016 p 263-292

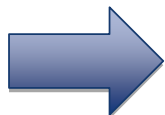
Pollirer/Weiss/Knyrim/Haidinger: DSGVO Datenschutz-Grundverordnung

What can you expect?

1. Fundamental principles of data processing
2. General rules on the lawfulness of data processing
3. Data transmission
4. Examples for the legal basis “consent”
5. Summary

Fundamental principles of data processing

- Lawfulness, fairness and transparency
- **Purpose**: personal data shall be collected for specified, explicit and legitimate purposes and shall not be processed in a manner incompatible with these purposes
- **Principle of data minimization**: adequate relevant and limited data processing
- Accuracy
- **Principle of storage limitation** (store pseudo-anonymised data, deletion of data if no retention obligation is applicable, etc.)
- **Integrity and confidentiality** – implementation of organisational and technical measures for **appropriate security** of personal data
- **Accountability** : controller shall be responsible for compliance with legal requirements



Necessity of an unified, directly applicable data protection regime. Principles covered by GDPR.

Fundamental right to the protection of personal data

The protection of personal data and privacy is an individual, fundamental right and has added emphasis to the fundamental rights dimension within the EU

(Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16 (1) of the Treaty on the Functioning of the European Union provide that everyone has the right to the protection of personal data concerning him or her (Regulation (EU) 2016/679))

as e.g. fundamental right of freedom

“**Everybody** shall have the **right to secrecy for the personal data** concerning him or her”

Such data must **be processed fairly for specified purposes and either**

- **on the basis of a statutory obligation or authorization or**
- **the consent prior given by the person concerned or**
- **other legitimate basis stated by law, e.g. legitimate interests of the controller**

Everyone has the rights of access, modification, rectification and deletion of personal data concerning him or her

Fundamental right only for „personal data“!

Definitions – types of data

Personal data: Any information relating to an identified or identifiable person

Special categories of personal data: revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation

➡ Data concerning animals and specifically their health not considered as “special”

Indirect personal data („pseudo-anonymised data“): Manipulating a dataset in such a manner that individuals are not longer identifiable by their personal data. Identity **cannot be determined by legally permissible means** and not without in terms of time and expense

„**Anonymised data**“: encrypted or removed personally identifiable information on data sets, individuals cannot be identified by their data

➡ Measures on data protection depending on the type of data

Definition of parties concerned with data processing

Controller: natural or legal person, public authority, agency or other body which, alone or jointly with others, **determines the purposes and means of the processing** of personal data. Data may be processed by the controller or by processors. **The controller is responsible for the data processing any obligation imposed by the GDPR.**

Data subject: Any natural and– according to Austrian Data Protection Act - **legal identified or identifiable person in regard to data processing**

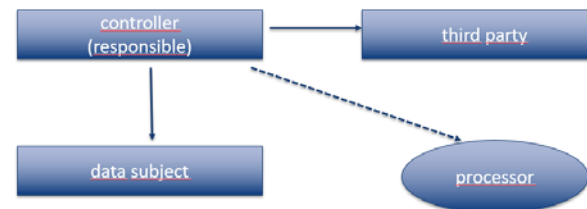
Processor: natural or legal person, public authority, agency or other body which **processes personal data on behalf of the controller**

Third party: natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, **under the direct authority of the controller or processor, are authorized to process personal data**

Parties must be defined and assigned

to their role.

No data ownership!



Legal circumstances for data processing

Purpose of data processing (Examples AUSTRIA)

Law of animal breeding / Animal breeding regulation: data within performance recording, genetic evaluation, breeding program

Chamber of Agriculture: controller

Data subjects: farmers and veterinarians

Federation of Austrian Cattle Breeders (ZAR): service provider

ZuchtData: sub service provider

e.g. DHI – data,
genetic evaluation

Veterinary Drug Act / Residue Control Regulation / Veterinary Antibiotic Volume Flow Regulation:

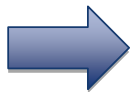
Prescription for pharmaceutical products has to be issued by the veterinarian (information on animal, farm, diagnoses, treatment and date of treatment, Vet-ID,.. has to be documented and issued by Vet.

Controller: veterinarians

Data subjects : farmers

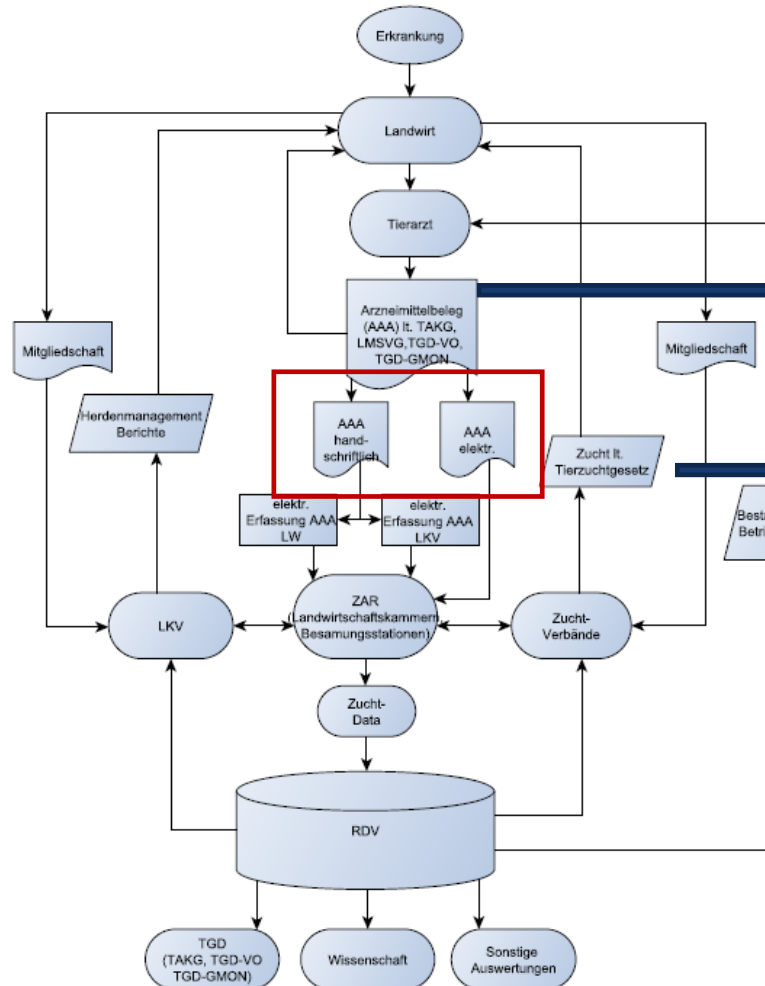
e.g. veterinarian diagnoses and
treatment data

Others (producer agreements,..)



Roles do change based on the different legal bases – clarify roles for each data source and processing !

Example veterinarian diagnoses



Documentation of diagnoses, etc. by VET due to **legal obligations (Veterinary Drug Act)**

Recording and processing of diagnoses by Federation of Austrian Cattle Breeders (ZAR) due to **obligations imposed by law on animal breeding** (part of breeding program / breeding goal)

Lawfulness of data processing

Data processing is considered as lawful if at least one of the following conditions is fulfilled:

- the **data subject has given consent** to the processing of his or her personal data
- processing is **necessary for the performance of a contract**
- processing is **necessary for compliance with a legal obligation**
- processing is necessary in order to **protect the vital interests of the data subject**
- processing is necessary for the performance of a **task carried out in the public interest or in the exercise of official authority**
- processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party

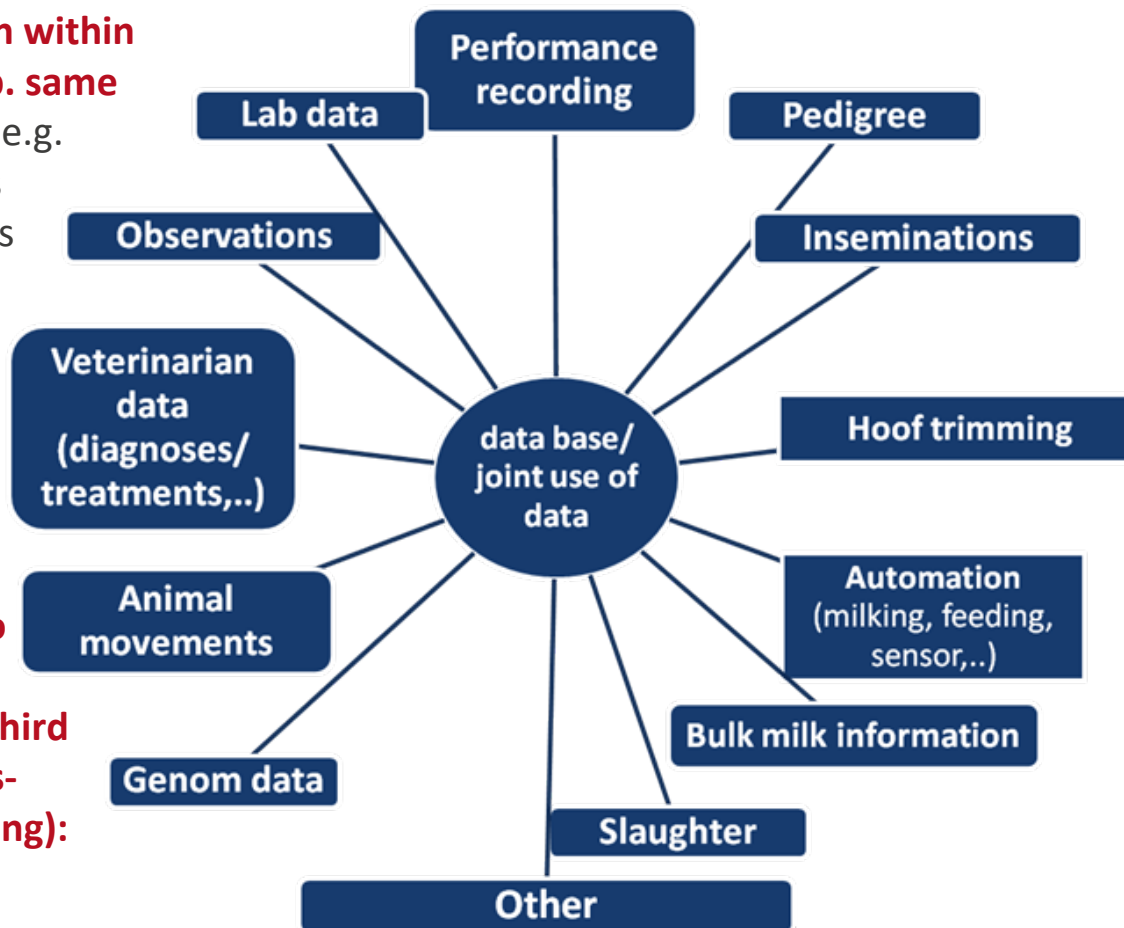
Each controller shall maintain a **record of processing activities** under his responsibility (Art 30 GDPR)

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Data transmission

Transmission within country resp. same jurisdiction: e.g. from various organisations



Transmission to international organisations/third countries (cross-border processing):
Art 44-50 GDPR applicable

Data transmission – important information

Data subjects must be provided with information in regard to the processing of their personal data:

- The **identity and the contact details of the controller**
- The **purposes** of the processing
- The **legal basis for the processing**
- If applicable, the legitimate interests pursued by the controller or by a third party
- Categories of personal data processed**
- The **recipients** or categories of recipients of the personal data, if any
- Period of storage
- Rights of data subjects (access, rectification, erasure, restriction, data portability, lodging complaint with supervisory authority)
- If applicable, transfer of personal data to a third country or international organization. In addition, the controller must provide reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available

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„Consent“ as legal basis for data processing

‘**consent**’ of the data subject means any **freely given, specific, informed and unambiguous indication** of the data subject's wishes by which he or she, **by a statement or by a clear affirmative action**, signifies agreement to the processing of personal data relating to him or her.

- Consent should **cover all processing activities** carried out for the same **purpose or purposes**.
- **Right to object data processing**.

Challenge:

- Various data sources – several declarations of consent may be necessary
- **Renewed consent** must be obtained, if **purpose and scope** of the data collection and the ongoing processing **change**

„Consent“ as legal basis for data processing

Several possibilities for giving consent in accordance with requirements of GDPR:

- **Declaration of Consent:** Consent must be given freely and informed, which means in an intelligible and easily accessible form, using clear and plain language
- Declaration of Consent integrated in **Terms and Conditions of other contractual agreements:** Information about data processing must be clearly distinguishable from other matters and an actively given consent is needed
- In order to comply with the requirement of the controller's ability to demonstrate the data subject's freely given and informed consent at any time, **not pre-checked tickboxes can be ideal**

Declared electronic consent

The screenshot displays a web application interface. At the top, there is a blue header bar with the word "Consent". Below this, a navigation menu on the left shows "Home" and "Übersicht Zustimmungserklär...". The main content area has a breadcrumb "Home \\" and a large blue button labeled "Overview „Declarations of Consent“". Below the button, the section "Zustimmungserklärungen" contains a list of items:

- ▶ Mitgliedschaften
- ▼ Datenweitergabe - Schnittstellen
 - Herdenmanagementdaten
 - Tagesbericht
 - Jahresbericht Gesundheitsmonitoring
 - Tierstammdaten TGD-GMON
 - Tierstammdaten Besamungstierarzt
- ▼ Onlinezugriff auf Betriebsdaten
 - Onlinezugriff Tierarzt auf RDV4Vet
 - Onlinezugriff BU-Labor auf RDV4M



Achievement: transparency and significant organizational advantages (e.g. also Art 15 GDPR, Right of access by the data subject)

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Summary

- Many chances and new possibilities by merging data for added value (Internet of Things, BigData,..), but also **challenges for protection of personal data**
- **GDPR (General Data Protection Regulation)** will increase protection and privacy of natural persons when personal data are processed
- Organisations have to **analyse the facts** (purpose of data processing, controller, processor, which data are processed, personal data, who has access, transfer of data, ..) and have to **clarify if it is in accordance with the regulation** (legal background, formalities,..)
- **Clear structures, agreements on use of personal data, transparency** e.g. are important to build up trust of the stakeholders and affected persons (data subjects)

Protection of personal data - fundamental right!
Transparency and trust - base for success in merging data!

Acknowledgement

Electronich Herdbook



ADvancement of Dairying in Austria



Thank you all dear project partners, funding organisations, colleagues and especially farmers and veterinarians!



THANK YOU FOR YOUR ATTENTION!