

Data protection safeguards beneficial to data subjects whose personal data are processed by DEG representative offices located outside of the European Union

DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH

Data Protection Safeguards
for processing operations carried out by representative
offices in third countries

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1. Objectives

Mn 1 DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH (“DEG”) ascribes great value to the protection of personal data of customers, business partners, employees and sundry parties DEG manages contractual relationships with.

In some countries of its investment activities outside of the European Union (EU, Union) DEG maintains remote agencies in the form of representative offices. To bridge the distance DEG uses modern data transmission and communications systems.

Outside of the EU and specifically approved economic areas and countries, however, the level of protection of personal data must be deemed unequal and generally lower in comparison to the Union.

In the light of the above said DEG pursues to avoid degrading the statutory position of a data subject whose personal data is processed by a representative office compared to a processing operation that is executed in the EU/EEA. In order to achieve this objective DEG warrants compliance with the rules outlined in this document towards the data subject.

The implementation of the present rules serves to:

- a. enable the cross-border transfer of personal data required to support business processes based on an unified privacy standard.
- b. retain the protection of fundamental rights and freedoms of natural persons and enable the exertion of those rights for data subjects that are subject to a third country processing DEG accounts for.

2. Scope of application

Materially:

Mn 2 The present rules are applicable to the transfer of personal data of natural persons to and its processing by remote representative offices of DEG.

This applies in particular to cases in which:

- DEG employees abroad are accessing data which
 - can be retrieved from DEG systems or
 - are made available by DEG, or

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- if they transmit data from abroad to DEG.

Mn 3 The present rules apply to the processing of personal data wholly or partly by automated means and to the processing other than by automated means which form part of a filing system or are intended to form part of a filing system (most prominently: physical records).

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Territorially:

- Mn 4 The present rules form a corporate policy and are binding for all DEG employees either domestic or abroad. The present rules will be communicated by DEG and its representative offices to its respective staff.
- Mn 5 Repealing the present rules does not affect obligations and requirements concerning personal data already transferred or processed prior to the repeal.

3. Relation to other regulatory instructions

- Mn 6 The present rules do not affect other existing lawful commitments and banking secrecy obligations. In addition, potentially existing domestic legal regulations for the processing of personal data remain unaffected by the present rules as well, whereas DEG ensures that a transfer of personal data from the EU to a third country is carried out in accordance with the requirements of the applicable data protection laws and that a transfer of data from a third country to the EU/EEA is carried out in accordance with the applicable data protection laws of the third country.
- Mn 7 It rests with a representative office to comply with potentially existing domestic legal regulations for the processing of personal data as well as with the present rules. They are obliged to provide DEG with the necessary information to comply with the applicable data protection law and to support DEG in implementing the requirements.
- Mn 8 The present rules are governed by the law of the Federal Republic of Germany and are to be interpreted under consideration of European Privacy Law (particularly Regulation 2016/679 (GDPR) and Directive 2002/58/EG).

4. Definitions

- Mn 9 Processor
A natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.
- Mn 10 Special categories of personal data
Personal data revealing racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, as well as genetic and biometric data unambiguously identifying a natural person, health data or data about a natural person's sex life or sexual orientation.
- Mn 11 Data Subject
Any identified or identifiable natural person, whose personal data is subject to a data processing activity. A natural person is deemed identifiable if to be identified immedi-

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ately or indirectly by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Mn 12 Data Exporter

EU-based initiator of a transfer of personal data (cf. down below) towards a data importer. DEG is regarded as data exporter concerning the data transfers to its representative offices.

Mn 13 Data Importer

Recipient (cf. down below) located in a third country (cf. down below). DEG's representative offices are deemed to be data importers.

Mn 14 Data Protection Officer

Independent authority designated by the controller to monitor compliance with the provisions of the GDPR, other data protection instructions of the Union and its member states as well as the distinct data protection efforts mobilized by the controller himself.

Mn 15 Third Party

Any natural or legal person other than the controller and processor but not the data subject.

Mn 16 Third Countries

Nations that do not possess an adequate level of data protection according to article 45 of the GDPR. This definition relates to countries that are not member states of the Union or that are not a contracting state of the European Economic Area, or otherwise approved in the respect of an adequate level of protection by declaration of the EU commission.

Mn 17 Recipient

Any natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing

Mn 18 Personal Data

Any information relating to an identified or identifiable natural person.

Mn 19 Representative Office

DEG remote agency located abroad.

Mn 20 Transfer of personal data

Disclosure of personal data by dissemination or any form of allowing to take notice of or access by a third party.

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Mn 21 Controller

DEG headquarters in Cologne. DEG acts as data exporter.

Mn 22 Processing of personal data / data processing

Any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

5. Common privacy relevant conditions applicable to all processing activities

Mn 23 DEG organized all processing activities of personal data either operated on its own or on its behalf according to the requirements of European data protection law.

Mn 24 For this purpose, DEG maintains a management system consisting of a privacy-centric operational and organisational structure, policies, guidelines and procedures and reporting lines in order to continuously comply with the lawful requirements mentioned above. This management systems extends to the representative offices as well. To the extent that local laws mandate a higher (different) level of protection for the processing of personal data than is already guaranteed by the GDPR, DEG will implement corresponding measures.

Mn 25 DEG is also equipped with the legally defined authority of a Data Protection Officer (DPO) that monitors DEG's privacy efforts and advises in data protection issues.

Mn 26 DEG and its representative offices collect and process personal data in a transparent manner and, if required, provide prior information to the person that concedes its data (data subject). Generally, DEG and its representative offices process personal data in a way that a data subject may expect from and rely on with an organisation of DEG's reputation.

Mn 27 DEG and its representative offices only process personal data on the basis of an existing legitimation. This always involves data that is accurate, appropriate to the purpose underlying the processing and relevant for this purpose.

Mn 28 DEG and its representative offices do not keep or use personal data whose original purpose has ceased to exist or whose retention period has elapsed.

Mn 29 Any transfer of entrusted personal data is executed with the required due diligence and care.

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- Mn 30 DEG and its representative offices take measures of data security required to establish an adequate protection level with regard to confidentiality, integrity and availability of the entrusted personal data. The extended demand of protection of special categories of personal data is to be accommodated in this proceeding.
- Mn 31 DEG and its representative offices comply with all rights of the data subject as there are: right to access, rectification, data portability and erasure of/to the data adhering to the that particular person.
- Mn 32 DEG and its representative offices cooperate with the relevant authorities to the required extent.

6. Rights of the data subject

- Mn 33 The data subject has the right to obtain information as to the data stored about the data subject by the controller.
- Mn 34 If such data may be objectively inaccurate or deemed to be nonessential according to the data subject's opinion since the original purpose that reasoned the concession of the data subject's personal data has elapsed, the data subject has the right to claim rectification or deletion or a restriction of processing. DEG shall inform the data subject separately about the specific circumstances of the process after submitting the claim.
- Mn 35 The specific rights outlined above may be filed with any representative office or the DEG headquarters at Cologne.
- Mn 36 An overview of the current representative offices may be found here::

<https://www.deginvest.de/International-financing/DEG/%C3%9Cber-uns/Unsere-Standorte/>

Contact data of DEG's DPO may be retrieved here:

<https://www.deginvest.de/International-financing/DEG/Data-protection.html>

- Mn 37 Furthermore, the data subject is entitled to direct questions or complaints on the application of the present rules to DEG at any time. The data subject's option to file a complaint with the relevant data protection authority remains unaffected.
- Mn 38 Additionally, a potential discrimination of a data subject based on a claim of the rights guaranteed in the present rules is inadmissible. DEG and the representative office that has a factual reference to the issue will commence investigations without delay if a data subject submits a complaint on the lawfulness of a data processing activity or the defective execution of the present rules. Unless a specific familiarity of a certain repre-

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representative office with the issue under investigation dictates a different proceeding, DEG is in the lead to maintain the required correspondence towards the claimant; the representative office(-s) involved in the case are required to support the investigation.

7. Data processing

- Mn 39 Processors with the general aptitude to conform with the following requirements may be entrusted with the processing of personal data on behalf of the controller: In such cases, a contract for commissioned processing must be agreed on in accordance with Art. 28 GDPR. In particular, the following points must be regulated therein:
- Mn 40 A regulation on the rights and obligations of the third party in the context of commissioned data processing shall be agreed with the processor in the Data Processing Agreement (DPA).
- Mn 41 The processor shall be bound by contract to process the received data only to the extent permitted by the contractual clauses and the particular instructions issued by the controller.
- Mn 42 The processor shall not contract a subcontractor to execute a particular processing activity under the present rules without prior written consent of DEG. Subcontracts under consent of DEG are admissible only in terms of a written agreement that imposes obligations upon the subcontractor to the same extent that the present rules impose obligations upon the processor. This is particularly applicable for the regulation according to MN°77. Should the sub-processor fail to comply with its data protection obligations under the DPA, the processor shall remain fully responsible to DEG for the performance of the sub-processor's obligations.⁴³ Data protection clauses agreed upon in the context of the subcontracting of processing activities according to Mn°42 are governed by German law.
- Mn 44 The parties shall agree upon how the processing shall be executed, what purpose it relies on and what technical and organisational measures are to be applied for data security. The processor must be able to guarantee the technical and organisational security measures required for data protection-compliant processing.
- Mn 45 The contracting party, however, remains accountable for the lawfulness of the data processing.

8. Procedure for a personal data breach

- Mn 46 In case of discovering a violation of domestic data protection law or the present rules the discovering DEG employees are to notify DEG's DPO. Furthermore, the accountable persons of the remote representative office are to report significant privacy-detrimental changes in the domestic law or their inhibition to comply with the present rules except mandatory domestic lawful regulations prohibit forwarding such information.

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Mn 47 Additionally, Mn 32 remains applicable.

9. Rules specifically applicable to a data exchange with representative offices

Obligations of the data exporter

- Mn 48 The processing of personal data, including its transfer, is to be executed in accordance with the relevant provisions of the applicable data protection law and the present rules. The design of the execution shall avoid a violation of applicable norms.
- Mn 49 The data importer is instructed to process the transferred personal data only on behalf of the data exporter and in accordance with the applicable data protection law and these rules;
- Mn 50 The technical and organisational measures of data security according to Mn 30 are to be selected under consideration of the applicable data protection law, the state of the art and the cost of their implementation and the risks presented by the processing and the nature of the data to be protected in order to sufficiently protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; the respective data importer is to provide sufficient guarantees in respect of the technical and organisational measures of data security.
- Mn 51 The data importer is to guarantee the measures of data security according to Mn 50 and the further rules of the present warrant.
- Mn 52 DEG informs the data subject before or as soon as possible after the transfer that its special categories of personal data could be transmitted to a third country not providing adequate protection within the meaning of Directive (EU) 2016/679 (GDPR) and that the transfer will rely on the present warrant.
- Mn 53 A data transfer in the course of a representative office's notification on domestic lawful norms that may inhibit or hamper compliance with the present rules, must be modified in order to adhere to the present rules, otherwise the transfer shall not take place.
- Mn 54 The data exporter makes available a copy of the present warrant and a summary description of the measures of data security according to Mn 30 to the data subject upon request, as well as a copy of any contract for sub-processing services which has to be made in accordance with the present rules, unless the contract contains commercial information, in which case DEG may remove such commercial information.
- Mn 55 In the event of sub-processing, the data exporter ensures that the processing activity is contracted to a sub-processor in accordance with article 28 of the GDPR, that the provisions of clause 7 are to be respected and that the personal data and the rights of a data subject are protected to the same extent that the present rules demand from the respective data importer.

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Obligations of the data importer

Mn 56 The respective data importer warrants that it is not subject to any laws that make it impossible for it to follow these regulations and comply with the GDPR and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the present rules it will promptly notify the change to the respective data exporter as soon as it is gets aware of such a change.

Further obligations of representative offices as data importers

Mn 57 Where a representative office acts as a data importer, it shall inform DEG promptly about:

- any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
- any accidental or unauthorised access; and
- any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so.

Mn 58 The respective representative office will deal promptly and properly with all inquiries from DEG relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred.

Mn 59 At the request of the data exporter the respective representative office shall submit its data-processing facilities for audit of the processing activities covered by the present rules. The audit activities shall be carried out by DEG or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality and selected by DEG and, where applicable, in agreement with the supervisory authority.

Mn 60 The respective representative office is obliged to present a copy of the present rules to data subjects on their enquiry.

Mn 61 The respective representative office is to process the personal data only on behalf of DEG and in compliance with its instructions and the present rules; if it cannot provide such compliance for whatever reasons, it agrees to inform DEG promptly of its inability to comply.

Mn 62 In addition to Mn^o56 the present rule warrants that a certain representative office has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from DEG and its obligations under the present rules.

Mn 63 Prior commencing the data processing of the transferred data technical and organisational measures of data security according to Mn 30 and Mn^o50 will be implemented for the respective representative office.

Mn 64 Contracting a sub-processor in the sphere of influence of a representative office will only be executed after prior consultation of DEG.

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- Mn 65 The present rule warrants that the processing services by a certain sub-processor procured for in the sphere of influence of a representative office will be carried out in accordance with clause **Error! Reference source not found.** of the present rules.
- Mn 66 The respective representative office is obliged to send promptly a copy of any sub-processor agreement it concludes to DEG.
- Mn 67 Besides Mn°60 the respective representative office makes available to the data subject upon request a copy of an existing contract for sub-processing, unless the contract contains commercial information, in which case such commercial information may be removed.
- Mn 68 The present rule warrants that upon termination of the provision of by a certain representative office or data-processing services procured for in the sphere of influence of a representative office , at the choice of DEG, all the personal data transferred and the copies thereof will be returned to DEG or shall be destroyed. In case of a contracted sub-processor, the sub-processor is to certify that the destruction of the entrusted data has been executed, unless legislation imposed upon the sub-processor prevents it from returning or destroying all or part of the personal data transferred. In that case, the sub-processor warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- Mn 69 The present rule warrants that DEG and the supervisory authority may inspect the data processing facilities of a certain representative office with regard to the measures as stipulated under Mn°68.

10. Third party beneficiary clause

- Mn 70 The data subject can enforce the present rule and Mn°42, Mn°49, Mn°50, Mn°51, Mn°52, Mn°54, Mn°55, Mn°56,

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- Mn°57 Mn°58, Mn°60, Mn°61, Mn°62, Mn°63, Mn°64, Mn°65, Mn°66, Mn°67, Mn°68, Mn°69, Mn°73, Mn°75, Mn°76, Mn°77, Mn°79, of the present warrant against DEG as third-party beneficiary.
- Mn 71 The data subject can enforce the present rule and Mn°42, Mn°56,

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- Mn°57, Mn°58, Mn°60, Mn°61, Mn°62, Mn°63, Mn°67, Mn°68, Mn°69, Mn°73, Mn°76, Mn°77, Mn°79 against a sub-processor in cases where both DEG and the respective representative office have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of DEG by contract or by operation of law as a result of which it takes on the rights and obligations of DEG, in the latter case the data subject can enforce the rules of the present warrant against this successive entity that bears all existing rights and obligations of DEG. Such third-party liability of the sub-processor shall be limited to its own processing operations under the present warrant.

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11. Cooperation with supervisory authorities

- Mn 72 DEG agrees to deposit a copy of this warrant with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
- Mn 73 DEG and the respective representative office agree that the supervisory authority has the right to conduct an audit of the respective representative office, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of DEG under the applicable data protection law.
- Mn 74 The respective representative office shall promptly inform DEG about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph Mn°73..
- Mn 75 DEG forwards any notification received from a certain representative office or any sub-processor pursuant to Mn°61 and Mn°74 to the data protection supervisory authority if DEG decides to continue the transfer or to lift the suspension

12. Liability

- Mn 76 If DEG or a representative office involved in the data processing causes damage to a data subject due to an inadmissible or inaccurate collection, processing or use of personal data according to the present rules or the applicable data protection law, DEG is liable for compensation of that damage pursuant to the applicable lawful norms.
- Mn 77 If a data subject is not able to bring a claim for compensation in accordance with Mn°76 against DEG or the respective representative office, arising out of a breach by the respective representative office or its sub-processor, because DEG or the respective representative office has factually disappeared or ceased to exist in law or has become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the present warrant as if it were DEG or the respective representative office, unless any successor entity has assumed the entire legal obligations of DEG or the respective representative office by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the present warrant.
- Mn 78 If DEG or a representative office involved in the data processing can produce evidence that they applied the required due diligence according to the specific circumstances of the case, no liability will be assumed.

13. Arbitration Process and Legal Venue

- Mn 79 A certain representative office agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the present warrant, the respective representative office will accept the decision of the data subject:

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- to refer the dispute to mediation, by an independent person or, where applicable, by the competent supervisory authority;
- to refer the dispute to the courts of the Federal Republic of Germany as competent tribunals for DEG's head office location.