Protection of personal data in peace operations

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Processing of personal data

• Personal data
  - Notion
  - Ordinary vs special data

• Processing of personal data
Principles

• Specific purpose(s)
• Obtained and processed lawfully and fairly
• Adequate, relevant and not excessive
• Limited retention storage
• Accurate data
Rights of data subjects

- Transparency and information
- Right of access
- Right to rectification and erasure
- Right to restriction of processing
- Right to data portability
- Right to object
- Recourse and remedies
- Limitation of restrictions
Sources of BEL legal framework

- Convention 108 – Council of Europe
  
  “To secure fundamental rights and freedoms of natural persons whatever their nationality or residence, within the territory of the Parties”

- Integration of data protection in domestic law
- Respect of the basis principles
- Allocation of rights to natural persons
- Derogations have to be provided for by law
Sources of BEL legal framework

Additional protocol

• Independent supervisory authorities
• Cross border movement of data

• Note: convention 108 has recently been reviewed
Sources of BEL legal framework

GDPR

- Art. 16 TFEU – Art. 39 TEU
- Impact of the choice of legal instrument
- Material scope
BEL law on data protection

- Respect of convention 108
- No actual implementation of art. 39 TEU
- Extension of the material scope of GDPR
- Divergence of legislative text and Parliamentary debate and documents
BEL law on data protection in operations

• Art. 2: extension material scope of GDPR
  – to areas beyond competence European Union
  – to the common foreign and security policy of EU

• Art. 105
  – Authorizes processing of all types of personal data
  – Integrates the basic principles of convention 108
  – Bestows rights on data subjects
  – Provides for limitation of those rights
  – Provides no limitation of basic principles
BEL law on data protection in operations

Legal hurdles

– Transfer authorized for operational reasons without explicit safeguards
– Competent supervisory authority?
  1/ Comity responsible for the supervision of intelligence services
  2/ General supervisory authority
  3/ ?
– Limited possibility of recourse
Where are we today?

- Controller: Chief of Defence vs Belgian State
- Designation of two Data Protection Officers for the department of defence
- Designation of a separate Data Protection Officer for the military intelligence service
- Records of processing activities
- Impact analyses
- Privacy by design
- Revision of contracts
Where are we today?

- Awareness raising
- Transfer
- Communication of privacy policy
- Rights of data subjects
- Access requests
- Identification of the legal basis
- Accountability as principle
Challenges

• Clarification of the legal framework

• Need for a *specific* and *common* framework