

or her determining the objectives and methods of processing personal data.

Questions

1. Must the second sentence of Article 38(3) of the GDPR be interpreted as precluding national legislation which provides that a controller or a processor may dismiss a DPO who is a member of staff of that controller or processor solely where there is just cause, even if the dismissal is not related to the performance of that officer's tasks?
2. In which circumstances may the existence of a 'conflict of interests', within the meaning of Article 38(6) of the GDPR, be established?

Ruling

1. The second sentence of Article 38(3) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), must be interpreted as not precluding national legislation which provides that a controller or a processor may dismiss a data protection officer who is a member of staff of that controller or processor solely where there is just cause, even if the dismissal is not related to the performance of that officer's tasks, in so far as such legislation does not undermine the achievement of the objectives of that regulation.
2. Article 38(6) of Regulation 2016/679 must be interpreted as meaning that a 'conflict of interests', as provided for in that provision, may exist where a data protection officer is entrusted with other tasks or duties, which would result in him or her determining the objectives and methods of processing personal data on the part of the controller or its processor, which is a matter for the national court to determine, case by case, on the basis of an assessment of all the relevant circumstances, in particular the organisational structure of the controller or its processor and in the light of all the applicable rules, including any policies of the controller or its processor.

ECJ 9 February 2023, case C-402/21 (Staatssecretaris van Justitie en Veiligheid e.a. (Retrait du droit de séjour d'un travailleur turc)), Work and Residence Permit

Staatssecretaris van Justitie en Veiligheid – v – S, E, C, Dutch case

Summary

The GDPR does not preclude national legislation which enables DPO's to be dismissed only for just cause, even if not related to the performance of the DPO's task, insofar as such regulation does not undermine the GDPR's objectives. A DPO may experience a conflict of interest when other tasks or duties would result in him or her determining the objectives and methods of processing personal data.

Questions

1. Must Article 13 of Decision No 1/80 be interpreted as meaning that it may be relied on by Turkish nationals who hold the rights referred to in Article 6 or Article 7 of that decision?
2. Must Article 14(1) of Decision No 1/80 be interpreted as meaning that Turkish nationals may rely on Article 13 of that decision in order to oppose a 'new restriction' – within the meaning of that provision and allowing the competent national authorities of a Member State to terminate their right of residence on the ground that, according to those authorities, they constitute a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society – from being applied to them. If so, the referring court seeks to ascertain whether and in what circumstances such a restriction may be justified under Article 14 of that decision?

Ruling

1. Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic

- Community and Turkey must be interpreted as meaning that it may be relied on by Turkish nationals who hold the rights referred to in Article 6 or Article 7 of that decision.
- Article 14 of Decision No 1/80 must be interpreted as meaning that Turkish nationals who, according to the competent national authorities of the Member State concerned, constitute a genuine, present and sufficiently serious threat to one of the interests of society, may rely on Article 13 of that decision in order to oppose a ‘new restriction’, within the meaning of that provision, from being applied to them allowing those authorities to terminate their right of residence on grounds of public policy. Such a restriction may be justified under Article 14 of that decision in so far as it is suitable for securing the attainment of the objective of protecting public policy pursued and it does not go beyond what is necessary in order to attain it.

ECJ 16 February 2023, joined cases C-524/21 and C-525/21 (Agenția Județeană de Ocupare a Forței de Muncă Ilfov), Insolvency

62

IG – Agenția Județeană de Ocupare a Forței de Muncă Ilfov (C-524/21), Agenția Municipală pentru Ocuparea Forței de Muncă București – IM (C-525/21), Romanian cases

Summary

Directive 2008/94/EC precludes unreasonable recovery claims of insolvency benefits.

Questions

- Must Article 1(1), Article 2(1) and the second paragraph of Article 3 of Directive 2008/94, in conjunction with Article 4(2) thereof, be interpreted as precluding national legislation which provides that the reference date for determining the period for which employees’ outstanding salary claims are to be met by a guarantee institution is the date on which insolvency proceedings in respect of their employer are opened and which limits that payment to a period of three months falling within a reference period comprising the three months immediately preceding

and the three months immediately following that date of opening?

- Must Article 12(a) of Directive 2008/94 be interpreted as meaning that rules adopted by a Member State which provide for the recovery by a guarantee institution, from an employee, of the sums paid to such an employee outside the general limitation period, in respect of outstanding salary claims of employees, may constitute measures necessary to avoid abuses within the meaning of that provision?
- Must Directive 2008/94 be interpreted as precluding the application of tax legislation of a Member State for the purposes of recovering, together with interest and late-payment penalties, from employees, sums unduly paid by a guarantee institution in respect of employees’ outstanding salary claims for periods not included in that laid down by the national legislation of that State, referred to in the first and second questions, or claimed outside the general limitation period.

Ruling

- Article 1(1) and Article 2(1) of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as not precluding national legislation which provides that the reference date for determining the period for which employees’ outstanding salary claims are to be met by a guarantee institution is the date on which the collective proceedings based on their employer’s insolvency are opened.
- The second paragraph of Article 3 and Article 4(2) of Directive 2008/94 must be interpreted as not precluding national legislation which limits the payment of employees’ outstanding salary claims by a guarantee institution to a period of three months falling within a reference period comprising the three months immediately preceding, and the three months immediately following, the date on which the collective insolvency proceedings based on the employer’s insolvency are opened.
- Article 12(a) of Directive 2008/94 must be interpreted as meaning that rules adopted by a Member State which provide for the recovery from an employee, by a guarantee institution, of the sums paid to such an employee outside the general limitation period, in respect of outstanding salary claims, in the absence of any action or omission attributable to the employee concerned cannot constitute measures necessary to avoid abuses within the meaning of that provision.
- Directive 2008/94, read in the light of the principles of equivalence and effectiveness, must be interpreted as precluding the application of tax legislation of a Member State for the purposes of recover-