

WHAT IS “PERSONAL DATA”? CJEU SRB RULING & RIPPLE EFFECTS

4 SEPTEMBER 2025



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Replay?

If you missed the LinkedIn Live event, you can watch it here:

[What is "Personal Data"? Live Debate on CJEU SRB Ruling & Ripple Effects](#)

Why are we here?

- ◆ EDPS v SRB:

- ◆ Ruling of **today**, 4 September 2025, of the Court of Justice of the European Union (CJEU)
- ◆ Concerns concept of “personal data”
- ◆ **Essential** concept under GDPR & EUI GDPR (GDPR equivalent for EU Institutions – Regulation 2018/1725)
 - **Without personal data being processed, GDPR does not apply**

Concept of "personal data"

- ◆ GDPR (+ EUI GDPR): “Personal data” means “any information relating to an identified or identifiable natural person”
 - ◆ “Information” Various CJEU judgments (e.g. Nowak [20 December 2017, C-434/16], CRIF [4 May 2023, C-487/21], OLAF [7 March 2024, C-479/22 P])
 - ◆ “relating to”
 - ◆ “identified natural person” or
 - ◆ “identifiable natural person”

“relates” = linked to given natural person “by reason of its content, purpose or effect”

“Identifiable”

- ◆ Recital 26 GDPR (+ Directive 95/46/EC):
 - ◆ “**Identifiable**”? “account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly”
 - ◆ “**Means reasonably likely to be used**”? “account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments”

“Means reasonably likely to be used”?

- ◆ Breyer (19 October 2016, C-582/14):
 - ◇ “it is not required that all the information enabling the identification of the data subject must be in the hands of one person” [§43]
 - ◇ “it must be determined whether the possibility to combine [a data point] with the additional data held by [a third party] constitutes a means likely reasonably to be used to identify the data subject” [§45]

“Means reasonably likely to be used”?

- ◆ Breyer (cont’d):
 - ◇ “that would not be the case if the identification of the data subject was prohibited by law or practically impossible on account of the fact that it requires a disproportionate effort in terms of time, cost and man-power, so that the risk of identification appears in reality to be insignificant” [§46]

“Means reasonably likely to be used”?

- ◆ OLAF (7 March 2024, C-479/22 P):
 - ◆ “A press release concerning allegedly unlawful conduct, such as fraud or corruption, is likely to arouse interest among the public and to induce readers, in particular journalists, to investigate the person who is the subject of the press release.”
 - ◆ “In such a context”, effort needed for web searches “does not appear to be in any way disproportionate, with the result that the risk of identification of the appellant by journalists or other persons unfamiliar with her professional background could not be regarded as insignificant” [§63]

Potentially personal data?

- ◆ Scania (9 November 2023, C-319/22):
 - ◆ Concerns vehicle identification numbers (VINs)
 - ◆ "where independent operators may reasonably have at their disposal the means enabling them to link a VIN to an identified or identifiable natural person, which it is for the referring court to determine, that VIN constitutes personal data for them, within the meaning of Article 4(1) of the GDPR, and, indirectly, for the vehicle manufacturers making it available, even if the VIN is not, in itself, personal data for them, and is not personal data for them in particular where the vehicle to which the VIN has been assigned does not belong to a natural person"

Combining case law teachings

- ◆ IAB Europe (7 March 2024, C-604/22):
 - ◆ Information = personal data if "as a result of its content, its purpose or its effect, it is linked to an identifiable person" (§37; C-487/21)
 - ◆ Re "identifiable": ref to Breyer (C-582/14) and C-683/21 => personal data that could be attributed to a natural person by way of additional information must be deemed as information relating to an identifiable natural person
 - ◆ "Identifiable"? Consider all means "reasonably likely" to be used for identification (Rec. 26 GDPR)
 - ◆ Covers not only personal data collected and stored by the controller but also all information "resulting from a processing of personal data that concern an identified or identifiable person" (C-579/21)

SRB case

- ◆ EDPS (European Data Protection Supervisor) v Single Resolution Board (SRB)
- ◆ **Today's judgment**

Background – Where It Started

- ◆ June 2017 – the Single Resolution Board resolves Banco Popular Español
- ◆ To check if creditors/shareholders deserved compensation, SRB must obtain an independent “valuation of difference in treatment”
- ◆ Deloitte engaged as independent valuer

Background - The Right to be Heard Process

- ◆ SRB launched a two-phase process for affected parties:
 - Registration phase – participants submit proof of identity and ownership of instruments
 - Consultation phase – verified participants submit written comments on SRB's preliminary decision and Deloitte's valuation
- ◆ Comments were coded with a unique alphanumeric identifier
- ◆ Only SRB could link comments to identities; Deloitte received only coded comments

Background - Complaints to the EDPS

- ◆ 5 stakeholders complained to EDPS due to the fact that SRB's privacy statement did not mention Deloitte as a recipient
 - Some complainants said this transfer exposed their legal strategy in parallel litigation, and that they would not have provided certain information had they known.
- ◆ EDPS (2020) found SRB breached its duty to inform under Regulation 2018/1725 and issued a reprimand
 - Consultation-phase replies were personal data (they contained views/opinions).
 - The alphanumeric code meant the data were pseudonymised, not anonymous.
 - Deloitte therefore qualified as a recipient under Art. 3(13).
 - SRB's failure to list Deloitte breached the duty to inform (Art. 15(1)(d)).
- ◆ SRB appealed to the General Court

Background - General Court Ruling (2022)

- ◆ General Court annulled EDPS's decision.
- ◆ Key findings:
 - “Relates to a person” – EDPS had not properly examined whether comments, by content/purpose/effect, related to an identifiable person.
 - “Identifiable person” – must be assessed from Deloitte's perspective. Deloitte had no access to identity data, so re-identification was not reasonably possible.
- ◆ Result: data sent to Deloitte were not “personal data” for Deloitte.

Background - The Appeal before the CJEU

- ◆ EDPS appealed
- ◆ Grounds:
 - General Court misinterpreted the definition of “personal data” (relates to / identifiable)
 - General Court erred in law by requiring assessment from Deloitte’s perspective
- EDPB intervened for EDPS, the Commission intervened for SRB

SRB judgment

- ◆ EDPS v SRB (4 September 2025, C-413/23 P)
 - ◆ "Identifiable" (relative nature of personal data)
 - ◆ Information and transparency

SRB judgment

- ◆ “Identifiable”
 - ◆ Anonymous data not in the scope of GDPR (para 70)
 - ◆ Pseudonymous Data from perspective of SRB (para 72 – 76)
 - ◆ Anonymous Data from perspective of Deloitte (para 77-90)

SRB judgment

- ◆ “Identifiable”
 - ◆ Pseudonymous Data from perspective of SRB (para 71 – 76)
 - **Para 71:** “defines the concept of ‘pseudonymisation’ as ‘the **processing** of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of **additional information**, provided that such additional information is kept **separately** and is subject to technical and organisational measures to ensure that the **personal data are not attributed to an identified or identifiable natural person**”

SRB judgment

◆ “Identifiable”

◆ Anonymous Data from perspective of Deloitte (para 77-90)

- **Para 77:** “As regards Deloitte, to which the SRB **transmitted pseudonymised comments**, the [TOMs] [...], have the **effect** that, for that company, those comments are not personal in nature. However, that presupposes, first,
 - that Deloitte is **not in a position to lift those measures** during any processing of the comments which is carried out under its control.
 - Second, those **measures must** in fact be such as to **prevent** Deloitte **from attributing those comments to the data subject** [...] in such a way that, for the company, the person concerned is not or is no longer identifiable.”

SRB judgment

- ◆ Identifiable
 - ◆ Anonymous Data from perspective of Deloitte (para 77-90)
 - **Para 81:** “as regards a [data] **release** which contained a certain number of [data] relating to a person without naming him or her, the [court] did not confined itself [...], to finding that the [processor] which published that [data] had all the information enabling that person to be identified, but **examined** whether the [data] contained in that [..] release reasonably enabled the public concerned to identify that person[..].”

SRB judgment

- ◆ Identifiable
 - ◆ Anonymous Data from perspective of Deloitte (para 77-90)
 - **Para 82:** “[...] means of identifying the data subject is not reasonably likely to be used where the risk of identification appears **in reality to be insignificant**, in that the identification of that data subject is prohibited by law or impossible in practice, for example because it would involve a **disproportionate** effort in terms of time, cost and labour [...] the **existence of additional information** enabling the data subject to be identified **does not, in itself**, mean that pseudonymized data must be regarded as constituting, in all cases and for every person, personal data [...]”

SRB judgment

- ◆ Identifiable
 - ◆ Anonymous Data from perspective of Deloitte (para 77-90)
 - **Para 85:** “that fact [pseudonymisation] has no bearing on the assessment of the personal nature of those data in the context, inter alia, of a potential **subsequent transfer of those data to third parties**. Accordingly, in so far as it **cannot be ruled out** that those third parties **have means reasonably allowing them to attribute pseudonymised data to the data subject**, [...], the data subject must be **regarded as identifiable** as regards both **that transfer** and **any subsequent processing** of those data by those third parties.”

SRB judgment

- ◆ Information & transparency:
 - ◆ Key question: was the transparency obligation met?
 - ◆ Art. 15 EUI GDPR (// Art. 13 GDPR): obligation to inform data subjects about processing, re personal data collected from data subject directly
 - ◆ SRB required to inform data subjects about transfer of pseudonymised data to Deloitte?
 - EDPS: failure to mention Deloitte as potential recipient? Infringement

SRB judgment

- ◆ Information & transparency:
 - ◆ CJEU: assessment of transparency obligation at moment of collection
 - **Para. 104:** data subject must be capable of **fully understanding** the information sent to him/her under Art. 15 EUI GDPR (// Art. 13 GDPR)
 - **Para. 105:** principles of fair and transparent processing => data subject must be informed of the **existence of the processing** operation and its purposes
 - **Para. 106:** processing based here on consent => **full knowledge of the facts** required for valid consent

SRB judgment

- ◆ Information & transparency:
 - ◆ CJEU: assessment of transparency obligation at moment of collection
 - **Para. 108:** "one of the purposes of the obligation to provide the data subject – at the time of collection of the personal data linked to him or her – with information relating to the potential recipients of those data is to enable that data subject to **decide, in full knowledge of the facts, whether to provide or, on the contrary, refuse to provide** the personal data being collected from him or her"
 - **Para. 109:** "information relating to potential recipients is indeed also essential in order for the data subject to be able to **defend his or her rights against those recipients subsequently**"

SRB judgment

- ◆ Information & transparency:
 - ◆ CJEU: assessment of transparency obligation at moment of collection
 - **Para. 112:** “the SRB’s obligation to provide information was applicable in the present case **prior to the transfer of the data** at issue and **irrespective of whether or not those data were personal data, from Deloitte’s point of view**, after any potential pseudonymisation”

DEBATE (*SEE REPLAY*)

QUESTIONS?

REACH OUT TO THE SPEAKERS



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David Wagner





IT contracting
confidentiality
AdTech
GDPR
breach response
cookies
IT contracting
digital economy
advertising
technical solutions to legal issues
achieve your digital ambitions
digital marketing
information technology
telecommunications
law
software
security
connected
whistleblowing
IaaS
e-commerce
database
data sharing
AI governance
internet
strategy
EU
privacy
DMA
TMT
FinTech
technology
worldwide
e-archiving
information
cybersecurity
litigation
global
e-reputation
DSA
cyber
innovation
SaaS
Internet of Things
identity
e-signatures
tech
legal solutions to technical issues
fair market practices
artificial intelligence
connected devices
ePrivacy
data governance



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