

January 2020

EUROPEAN DATA PROTECTION DAY - OUTLOOK FOR 2020

Today, 28 January, is **European Data Protection Day**. Launched in 2006 through the initiative of the Council of Europe, the aim of this day, which will involve all data protection authorities in Europe through events and activities, is to raise public awareness in the context of data protection.

At Wolf Theiss, we would also like to take this as an opportunity to look ahead to a) the priorities that the data protection authorities have laid out for 2020 and b) the developments that we expect to see in the field of data protection law.

A for Agenda of the European Data Protection Board ("EDPB"): the national data protection authorities of the member states, which are members of the EDPB, want to develop guidelines for the application of data protection law in certain priority areas. The intersection between the Payment Services Directive (PSD2) and the General Data Protection Regulation (GDPR) is on the agenda, as is data protection in "connected cars" and "social media users as a target group".

The perennial issue of "data subjects' rights", e.g. dealing with requests for data access or deletion, will also be further developed. Other ambitious topics include "data protection in block chain" and the use of new technologies (e.g. artificial intelligence, linked assistants). The EDPB's non-binding but benchmarking guidelines provide companies with greater clarity but may also require adaptation.

B for Brexit: in 2020 the United Kingdom will leave the EU for good. But how does this affect regulations on data transfer from the EU to the UK and *vice versa*? Whether the UK will qualify in the future as a third-party country *with* or *without* an adequate level of data protection has a direct impact on whether companies will have to agree to further guarantees for data transfers from the EU to the UK. In view of the existing GDPR and local data protection regulations in the UK, it should be possible to achieve an adequate level of data protection if these (or equivalent) data protection regulations continue to apply.

In any case, the EU Commission plans to issue a decision on this topic by the end of 2020. It remains to be seen whether there is an explicit transitional arrangement by the Commission for the period between Brexit and the decision on the adequacy of current data protection measures. This was also the situation in the comparable case of the

annulment of the Safe Harbor decision by the ECJ. However, the companies concerned must adapt their data protection declarations and internal data protection documents.

In the same context, the ECJ decision on the admissibility of standard contractual clauses (SCC), expected in early 2020, should also be mentioned as contractual guarantees of an adequate level of data protection in international data transfers. It is true that the Advocate General has already pronounced the legality of SCC in his - non-binding - opinion. If, on the other hand, the ECJ were to declare the SCC invalid, this would lead to a massive need for action by the internationally active companies concerned, whose data transfer on the basis of the SCC would then become unlawful.

C for **cookies**: in 2019, numerous national data protection authorities published - sometimes divergent - guidelines for obtaining cookie consent in a legally compliant manner. In 2020, it is expected that the authorities will pay particular attention to the correct compliance with the requirements for cookie consent. As long as national data protection authorities' handling of cookies remains inconsistent, a correctly formulated cookie banner will be a major challenge in cross-border applications. A new **ePrivacy Regulation** is intended to remedy this situation by harmonising the rules on cookies, web tracking, unsolicited communications and cold calling. After years of discussion and a missed attempt at finalisation at the same time as the DSGVO, the new entry into force date is planned for 2020.

This short list of **data protection - ABC** topics is of course only a first point of discussion given the abundance of relevant data protection topics. We look forward to meeting these and other data protection challenges together with our clients in the coming months and will be happy to support you in pointing out risks, responding to claims and avoiding penalties.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

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