

GDPR evaluation after two years - seize the opportunity for corrections!

05/22/2020 • HmbBfDI

The General Data Protection Regulation (GDPR) is one of the most ambitious EU legislative projects in recent years. It reformed data protection in the EU and harmonized it across Europe. Rights and freedoms for the people of Europe have been reformulated and strengthened overall. At the same time, effective law enforcement instruments have been created by the supervisory authorities in the Member States under the umbrella of the European Data Protection Board.

The interim balance to be drawn after two years shows a lot of light, but - typical for a project of this size and complexity - unfortunately also shadows. On the positive side, people in Europe are making use of the rights created by the GDPR and are using the new options for dealing with their data on their own responsibility. In recent years, companies have made considerable efforts to implement the provisions of the GDPR and to conform to data protection regulations. The supervisory authorities have worked together in the European Data Protection Board with great success to draw up numerous guidelines and recommendations for the interpretation and implementation of the new legal provisions.

At the same time, however, the procedural provisions of the GDPR have not yet proven themselves in the concrete implementation, i.e. when applying the regulations of data protection law to individual persons responsible in the European network. The concept of the so-called One-Stop-Shop (OSS), according to which a lead authority at the location of a company's European headquarters is responsible for overseeing all of its data processing in the EU, has led to a shift in responsibility, especially in the case of large, globally operating data processors, to a few few supervisory authorities. In practice, a two-pronged approach has developed. On the one hand, purely national procedures in law enforcement are run through quickly, while the procedures for cross-border data processing in the OSS mechanism often take an extremely long time. If procedures run for two years without the lead authority even coming to a draft decision, this has a significant impact on the Europe-wide protection of the rights and freedoms of data subjects. This applies, for example, in the case of the transmission of user data from WhatsApp to Facebook. At the same time, the systematically different treatment of violations or suspected violations by responsible bodies by different supervisory authorities leads to a massive impairment of fair competition in the digital single market. A corresponding distortion of competition has been lamented by companies headquartered in Germany for some time.

The evaluation, which is due two years later and is currently to be carried out by the EU Commission, will provide the

opportunity to legislatively correct any undesirable developments that have been identified. To this end, the Hamburg Commissioner for Data Protection and Freedom of Information proposes strengthening the position of the authorities concerned in the OSS procedure. So far, the GDPR has provided for a general obligation on the part of the responsible authorities to immediately submit a draft decision to the supervisory authorities concerned for comment, which can then be submitted to the European clarification procedure with a corresponding objection. Clear timelines, such as a three-month period, should significantly shorten the currently unsatisfactory processing times for the submission of draft decisions. An extension of the deadline for more extensive procedures could be ordered by the European Data Protection Board in individual cases upon request and after justification by the lead authority. It must then be regulated that the authorities concerned have the right, if this period is exceeded, to take the case processing into their own responsibility by means of a right of self-intervention. For this purpose, a mechanism must be provided in which the authorities involved in each case decide together which authority should then take charge of the case for all others.

In order to ensure uniform implementation, a fully harmonized administrative procedure is also a key requirement. The past has shown that different procedural regulations lead to legal uncertainty and are a gateway for administrative procedures to be protracted at the expense of the rights and freedoms of those affected. This applies, for example, to national regulations regarding the hearings of those affected and responsible bodies as well as to requirements for the protection of trade and business secrets, which make the exchange of information between the authorities involved in the process significantly more difficult.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information: "After two years of the GDPR, there is an opportunity and a need to significantly optimize the cooperative administrative procedure by correcting individual procedural regulations of the GDPR. In the end, the GDPR will only be accepted by those affected and on the market if European data protection law does not leave any room for global, data-intensive players to be better off. The principle of "hanging the little ones and letting the big ones go" should not apply here. I am convinced that the necessary corrections can be implemented quickly by the European legislator."

press contact

rot13("Znegva Fpurzz", "sknurqobzveljtwx");mmehcS nitraM

Phone:

+49 40 428 54-4044

Email: rot13("cerffr@qngrafpuhgm.unzohet.qr", "zpwmdvgsrbyxneit");ed.grubmah.ztuhcsnetad@esserp