

EU Commission presents evaluation report on GDPR

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The report published yesterday by the EU Commission on the assessment and review of the General Data Protection Regulation (GDPR) essentially draws a positive conclusion. However, the opportunity to correct discernible undesirable developments with new proposals after more than two years of practice of the General Data Protection Regulation is not being used. In particular, the Commission's engagement with the provisions of Chapter VII on supervisory cooperation and coherence, which should actually have been a focus of the evaluation according to Art. 97 (2) GDPR, is rather disappointing. The approach of relying on a cooperative administrative procedure for the control of cross-border data processing, in which all supervisory authorities of the member states are involved, is one of the most far-reaching changes brought about by the GDPR. Behind this lies a detailed network of standards that contain a complex interaction between authorities involved in different functions and towards the European Data Protection Board as the highest decision-making authority for questions of interpretation.

After two years of experience with this approach, it is obvious that there are massive blockages by the supervisory authorities in cross-border data processing. So far, it has proven to be a blunt sword, especially in relation to large global internet services and platforms, for whose better regulation to protect data subjects the GDPR was created. Unlike small and medium-sized companies, the global Internet companies have not experienced any corresponding regulation by the supervisory authorities, despite numerous massive data protection incidents in the last two years, apart from the CNIL's 50 million euro fine against Google. However, this is a purely national procedure, since the responsible body has not previously had a main office in Europe. The processing of complaints, which were raised primarily by civil society organizations on behalf of many users in Europe at the beginning of the GDPR, is still a long time coming.

It is to be welcomed that the EU Commission calls for better equipment for the supervisory authorities in the member states in

its evaluation report. Their human and financial resources are often lacking. This is also the case in Germany, where the enforcement of the regulations is largely the responsibility of the supervisory authorities of the federal states, for good reason. However, attributing the reasons for the difficulties in cross-border control of data processing solely to the poor resources of the authorities does not go far enough. Rather, the following causes prove to be responsible for this:

the regulations on the one-stop shop, according to which an authority at the location of the main office of a company in the EU is responsible for all of its data processing, without clear deadlines being set for this,

an extremely bureaucratic participation procedure between the supervisory authorities in execution,

the lack of options for action vis-à-vis the leading supervisory authorities, as long as they do not bring any decision proposals into the process,

massively different national procedural regulations, the compatibility of which with the GDPR is sometimes doubtful,

different views on the understanding of regulatory law and the imposition of sanctions between the European data protection authorities.

Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information: "The positive function of the General Data Protection Regulation as a pan-European draft and lighthouse project to protect rights and freedoms in the digital age cannot be doubted. However, it is also clear that the GDPR has obvious legislative dysfunctions in the area of law enforcement. In the future, we need regulations on responsibilities that do not hinder the European supervisory authorities and do not offer any scope for forum shopping by Internet companies. The current set of regulatory instruments leads to two-speed data protection enforcement: while national procedures often end quickly and sometimes with very high fines, serious cross-border cases involving all data protection authorities hang for years in the mill of a bureaucratic procedure and absorb the power and resources of the authorities. Effective protection of the rights and freedoms of those affected as well as fair competition on the digital market cannot be established in this way. A critical analysis must relate to this in particular if the regulatory project is not to be jeopardized. Even if a systemic reversal is not yet pending: There is no question that some provisions of the GDPR need to be adjusted. Unfortunately, the opportunity to make adjustments was not used in the context of this evaluation report."

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