



Digitisation of the economy

Facts and figures about the legal and regulatory
framework 4.0 – EXTRACT –



München und
Oberbayern



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Extract

Digitisation of the economy Facts and figures about the legal and regulatory framework 4.0

Part 1: Promoting innovation

4. Big Data

What is it about?

Big Data provides a digital economy with a huge range of possible applications and opportunities, as well as high growth potentials.

Examples include fraud detection and social media monitoring. To avoid competitive disadvantages, companies need big-data models based on a reliable legal framework. On the Internet of Things, machines are generating an enormous amount of data (both personal and machine data). Now, with Industry 4.0 (the IoT), the personal relevance and thus the traceability of (material) data to a particular person is growing.

Assessment

Person-related data

Data-protection principles have to be reconciled with a strict purpose, as well as with data minimization - whereby all of this needs to be toughened by the principles of “data protection by design and by default” and the obligation to anonymise and pseudonymise data -, the obligation to erase data, and extensive information requirements with big-data-based developments in industry. It is thus important to have a continuous dialogue between the business community, policy-makers and data protection supervisory authorities, as well as with the legislative, executive and administrative authorities. The aim should be solutions that are harmonised throughout the EU, as well as global standards.

Machine data

Unlike personal data, pure machine data, which cannot be traced back to any person, is not subject to data protection laws. Practicable delineations between machine and personal data are needed in order for suitable standards to be developed. These standards should allow for room for manoeuvre (for example, upper limits and other contractual rules). Legal standards must address the issues of when machine data may be person-related and when data protection and copyright law may thus have to be observed.

Conclusion

Person-related data

- Development of data protection as an ongoing process accompanying digitisation
- Drawing up EU-wide harmonised data protection requirements
- Agreement on worldwide minimum standards

Machine data

- Clarification of the definition “personal data” and the development of standards

Part 2: Establishing legal certainty

3. Data protection

What is it about?

Data protection is the right of individuals to freely decide whether and how their data can be used.

Assessment

In a digital world, many questions related to the right to the protection of personal data are arising in every sector of the economy. A stable legal framework, as well as European and global standards over the medium term are essential in view of the opportunities for collecting, evaluating and transmitting data in a networked world. Freedom of contract should prevail over state regulation.

Boundaries and responsibilities must be clarified, as well as questions of data ownership and rights of data use, as well as the extent to which payment can be made using data. Transparency and information must be made proportionate to the interests of those involved and the companies. Information overload must be avoided – it only creates a bureaucratic burden, without any related useful value.

Conclusion

- Development of data protection as an ongoing process accompanying digitisation
- Contractual freedom and self-regulation should have priority over state regulation

4. Processing in the context of employment

What is it about?

The use of smart machines and IT in the workplace makes it possible to gather and evaluate a wide range of data on employees.

Employees are becoming “see-through”. The aim must be to establish a framework for data protection and to take account of the interests of employers and staff appropriately.

Assessment

Modern employee data protection legislation has to define obligations and limits clearly. Principles of data protection by design and by default must already be taken into account at the developmental stage. Here, it is the task of national legislators to create the framework conditions for data protection law. The General Data Protection Regulation (GDPR) envisages a so-called “access clause” (a national “can do” regulation). However, the principles of the GDPR law will also apply in the field of employee data protection. The GDPR will allow Big Data (cf. Parts 1 and 4), although in view of the high barriers to be overcome, legally compliant implementation will also remain a balancing act

in the digital world of work. It will be the task of policy-makers to make effective use of the room for manoeuvre provided by the GDPR law. A modern employee data protection law should be technologically neutral and, in the age of Big Data, allow the company to use technology and new communication media in a way that is balanced with the concerns of the staff. Unnecessary bureaucratic demands (such as written form requirements for consent by employees) must be dropped.

Furthermore, a national regulation on employee data protection must not lead to a situation where companies active throughout Europe come across legal relationships that differ greatly from one EU member state to another with respect to employee data protection, e.g. on the subject of “e-mail and Internet use at the workplace”. To this extent, the goal should be to reach an agreement on minimum standards across the EU (as far as possible).

Conclusion

- Excessive bureaucratisation should be avoided
- Agreement on EU-wide minimum standards for employee data protection
- Legal certainty for the use of IT and innovation in the world of work must be established

5. Data portability

What is it about?

The right to “data portability” is aimed at giving people control over their own data in IT-supported processes. For example, it should make it easier to make the transition from one social media platform to another.

Assessment

Technically, formats must be developed that are interoperable and so enable data to be transferred to a new contractual partner. Legally, it is a question of clarifying the pre-conditions for and the limits of the right to data portability, its general or sector-specific necessity, and the relationship to special regulations (such as statutory obligations for the transfer of data from energy supply utilities and banks).

Conclusion

- Clarification of the scope and limitations of the right to data portability
- The relationship to special regulations must be clarified

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