

newsletter

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DATA PROTECTION

Data protection reform in the EU - Coming soon

On 25 January 2012, the European Commission proposed a comprehensive reform of the European Union's data protection rules that had been in place since 1995, in order to modernise the existing data protection system, strengthen individuals' rights, improve the clarity and coherence of the EU rules and boost Europe's digital economy. The reform package consists of two legislative proposals: a proposal on a general data protection regulation (COM/2012/011; "Data Protection Regulation"), and a proposal for a directive on the processing of personal data for crime prevention, detection, investigation, or prosecution of criminal offences and related judicial activities (COM/2012/010; "Crime Prevention Directive"). This article focuses mainly on the Data Protection Regulation, which will replace the current data protection Directive 95/46/EC.

The Data Protection Regulation will be directly applicable in all EU Member States and will establish a pan-European law replacing the current (and often inconsistent) national laws that implement Directive 95/46/EC. Businesses processing personal data will not only be governed by a single law, they will also have to deal with only one supervisory authority that will make it easier to do business in the EU. At the moment, companies are supervised and controlled by different authorities in each Member State in which they are established.

Additionally, European companies must comply with more stringent rules than their competitors established outside the EU and that conduct business within the EU. According to the Data Protection Regulation, this is about to change: the Data Protection Regulation will apply whenever there is an offering of goods or services to data subjects in the EU or if the data processing activities are related to profiling (i.e. monitoring the behaviour of data subjects).

The Data Protection Regulation will also strengthen citizen's rights, for instance by reinforcing the 'right to be forgotten' principle: data related to an individual shall be removed if such individual no longer wishes his or her data to be processed. Wherever consent is required for data processing, it will have to be given explicitly, rather than assumed as is sometimes currently the case.

Further, people will have easier access to their own data and be able to transfer personal data from one service provider to another more easily. Where data processing activities imply specific risks to the rights and freedom of data subjects, the controller must carry out a privacy impact assessment, which contains at least a general description of the processing operations under consideration and an assessment of the associated risks.

European regulators will also have strong enforcement powers. Namely, data protection authorities will be able to fine companies up to 1 million euros or 2% of their global annual turnover if they do not comply with the data protection laws.

On 15 June 2015, the Council reached a general approach on the Data Protection Regulation, which means that the Council has a political agreement on the basis of which it can now begin negotiations with the European Parliament. The European Commission is pushing to obtain complete agreement of the Council and the European Parliament on the data protection reform before the end of this year, which means that the next Data Protection Day (28 January 2016) will likely be celebrated with the newly adopted data protection legislations. The Regulation will be enforceable in all Member States two years after it has been adopted. Member States will also have two years to transpose the provisions of the Crime Prevention Directive into national law.

CRIMINAL LAW

Freezing of companies' assets has become simpler

The Hungarian Parliament has recently adopted the modification of Act XIX of 1998 on Criminal Procedure (the "Criminal Procedure Code").

The general rule of the Criminal Procedure Code provides that asset freezing is only available to the courts if the allegedly committed crime can be sanctioned by confiscation of property or a civil remedy was initiated by the injured party and there is a major risk that someone will prevent the confiscation or the satisfaction of the said civil remedy.

As regards certain white collar crimes allegedly committed in the financial, investment or insurance sectors and where amounts concerned exceed HUF 50,000,000 (approximately EUR 163,000), the new rules enable the courts to freeze the company's assets in the absence of the above-mentioned conditions.

Moreover, certain private individuals' assets, such as the company's owners, executives, supervisory board members and auditors, can also be frozen, as well as the assets of affiliated companies.

CIVIL PROCEDURES

The Hungarian government has decided on the establishment of a new Private International Law Code

The Hungarian government has decided to modernise extensively Law Decree No. 13 of 1979 on Private International Law. This piece of legislation sets out the rules for establishing the governing law and the jurisdiction of courts in relation to disputes with international aspects.

The Private International Law Codification Committee set up for this purpose and composed of legal professionals and academics, will prepare the new regulation's concept by 30 November 2015. The professional and the social debate about the concept shall be carried out until 31 January 2016, and the Committee shall then prepare the draft of the new regulation by 30 November 2016.

COMPETITION / STATE AID

Hungarian oil and gas company MOL wins against the European Commission

In September 2005, by virtue of an authorisation MOL sought extension of the mining rights it owned for 12 hydrocarbon fields where extraction had not yet begun. By an agreement signed in December 2005, MOL and the Hungarian State extended by five years the deadline for starting to exploit those 12 fields, and fixed the fee payable for that extension at a higher level than the basic fee prescribed by the Mining Act at the time. Moreover, it was agreed that the same fee be applicable to all MOL fields for 15 years. As a result of a subsequent amendment to the Mining Act, the rate of the mining fee was increased above the level fixed in the agreement, but the agreed fees were not increased.

The European Commission found that the above situation favoured MOL over its competitors and, therefore, constituted state aid that was not in compliance with the Common Market. MOL requested the annulment of the Commission's decision and the General Court ruled in MOL's favour.

When the Commission appealed, the Court of Justice examined whether MOL was granted a selective advantage and found that this was not the case.

The Court of Justice ruled that the legally defined discretion of the Hungarian authorities to set the rate of the extension fee was not contrary to EU law. In addition, the agreement did not have a selective character as the criteria for concluding such an agreement were objective and applicable equally to all operators.

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