

Rücker / Kugler

**New European
General Data Protection
Regulation**

A Practitioner's Guide

C.H.BECK · HART · NOMOS

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New European General Data Protection Regulation

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A Practitioner's Guide

Ensuring Compliant Corporate Practice

edited by

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Foreword

Digitalisation is advancing rapidly, and enterprises across Europe and the world are swiftly adapting their business processes and products to bring them into the new digital age. At the very heart of this business adaptation is the processing of personal data, which has increased significantly over recent decades and which has become one of the core assets of digital business.

Data protection law is still fragmented across Europe under the current data protection Directive 95/46/EC and its various national implementations. To unify data protection law in Europe and to improve the protection of fundamental rights, the new European General Data Protection Regulation (“GDPR”) introduces uniform data protection legislation that will apply directly in all European Member States from 25 May 2018. The GDPR will also serve as a binding legal framework for countless companies outside the EU that do business in the Union.

This handbook clearly and concisely addresses the legal pitfalls and compliance requirements resulting from the GDPR and explains in detail the new situation under the law. It was written to fully embrace the new European approach to data protection by focusing on the debate among legal professionals and on legal sources at European level. There is a wealth of expert legal commentary on national law, but the European debate, mandatory from 25 May 2018, still lacks comprehensive expert literature on the practical questions of data processing. Conceived as a guide for legal professionals in their day-to-day practice, this book is intended to help fill that gap using practical examples and scenarios to assist companies affected by the GDPR.

Giving comprehensive insight into the GDPR, this handbook starts with a chapter on the regulatory background (Development and importance of the data protection reform) and the essential material and personal scope of the GDPR (Scope of application of the GDPR). Subsequently, the consequences of a strictly European legal framework and rules for a consistent and uniform interpretation of the GDPR are presented in detail. Another key issue is the fundamental principles of lawful data processing under the GDPR for any company (Lawful processing of personal data in companies under the General Data Protection Regulation), including the newly introduced compatibility test. The chapter General conditions for data processing in companies under the GDPR deals with particular legal requirements to be implemented by companies. The legal assessment also addresses subjects such as the increased duties towards the data subjects and their rights, including the right to be forgotten, data portability as well as the question of group privileges and the issue of drastically increased administrative fines and damages. Finally, the chapter on Practical examples addresses inevitable aspects of data management such as cloud computing, outsourcing and data transfer to third countries outside the EU. This chapter also provides general guidance to any business for successfully exploring data as an asset.

Foreword

This includes direct marketing as well as (user) profiling and compliance issues in app development.

We would like to thank everyone involved in bringing this book into existence. We owe our deepest gratitude to our co-authors as well as to Charlotte Fischer, Patricia Gola, Stefanie Schneider, Sarina Schwake, Victoria Copeland and Patricia Cress for their contribution to this handbook.

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Daniel Rücker
Tobias Kugler

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List of Abbreviations

AG	Advocate General
art.	Article
BCR	Binding Corporate Rules
cf.	see, compare
CFI	Court of First Instance
CJEU	Court of Justice of the European Union
DPIA	Data protection impact assessments
DPO	Data protection officer
EC	European Community
ECHR	European Court of Human Rights
ECLR	European Competition Law Review
ECR	European Court Reports
ed.	Editor
EEA	European Economic Area
EDPL	European Data Protection Law Review
EFTA	European Free Trade Association
EJIL	European Journal of International Law
EJRR	European Journal of Risk Regulation
EJSL	European Journal of Social Law
EJSS	European Journal of Social Security
ELJ	European Law Journal
E.L.Rev.	European Law Review
EP	European Parliament
ePrivacy-Directive	Directive 2002/58/EC
ESC	European Social Charter
et al.	and others
et seq.	following
EU	European Union
EuGRZ	Europäische Grundrechte-Zeitschrift
EULF	The European Legal Forum
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
GDPR	General Data Protection Regulation
laaS	Infrastructure as a Service
ibid.	cited in preceding footnote
ILO	International Labour Organization
infra	see below
IR	Implementing Regulation, Reg. No. 987/2009
JCMS	Journal of Common Market Studies
mn.	Margin Number (Randnummer)
NATO	North Atlantic Treaty Organization
NJW	Neue Juristische Wochenschrift
NZS	Neue Zeitschrift für Sozialrecht
OJ	Official Journal
OMC	Open Method of Coordination
p.	page/s

List of Abbreviations

PaaS	Platform as a Service
para.	Paragraph
RAE	Revue des Affaires Européennes
RBSS	Revue Belge de sécurité sociale (The same articles are published in Dutch by BTSZ)
RDSS	Revue de droit sanitaire et social
REDS	Revue européenne du Droit Social
Reg.	Regulation
RISS	Revue international de sécurité sociale
RLM	Revue de l'Union Européenne (former Revue du marché commun)
RSV	Rechtspraak Sociale verzekeringen (Case-law in social security)
RTDE	Revue trimestrielle de droit européen
SaaS	Software as a Service
SEW	Tijdschrift voor Europees en economisch recht (Journal for European and economic law)
SGb	Die Sozialgerichtsbarkeit
supra	see above
SZS	Schweizerische Zeitschrift für Sozialversicherung und berufliche Vorsorge
TEU	Treaty on European Union
TFEU	Treaty on the functioning of the European Union
ZD	Zeitschrift für Datenschutz (Journal)