

# **UPDATE**



## 13 December 2017

## **POLICY DEVELOPMENTS**

#### **THE COMMISSION'S AGENDA FOR 2018**

The Commission has put several initiatives related to technology on the agenda for 2018.

On 24 January 2018, the Commission is expected to adopt further guidance on the General Data Protection Regulation (GDPR). This guidance should provide further clarity on how to be compliant with the GDPR. Currently, there are still some outstanding questions on how to interpret the legislation. You can find more information on what the GDPR means for you in Accountancy Europe's factsheet <u>What do the new EU data protection rules mean for you?</u>

On 07 March, the Commission will discuss its initiative on Financial Technology (FinTech). This follows up on the public consultation that the Commission organised earlier this year. You can find Accountancy Europe's response <u>here</u>.

Finally, the Commission will discuss on 25 April 2018) its initiative on Artificial Intelligence (AI) and Robotics. The accountancy profession is increasingly experimenting with and making use of AI and robotics. For example, H&R Block is <u>using</u> AI to provide tax advice and EY started <u>experimenting</u> with drones to improve its audit processes.

In a parallel development, the three main EU institutions adopted a joint declaration on their common legislative priorities for 2018. The European Parliament, Council, and Commission agree that progress is needed to capture the benefits and avoid the risks of developments in AI and robotics. They also want to ensure this happens with respect for a high level of data protection, digital rights, and ethical standards.

You can learn more about the impact of technology on the accountancy profession in Accountancy Europe's <u>Technology Hub</u>.

## DATA PROTECTION AUTHORITIES ADOPT GUIDANCE ON EU PRIVACY RULES

The EU data protection authorities in the Article 29 Working Party (WP29) <u>adopted</u> during its plenary meeting new guidelines for the implementation of the General Data Protection Regulation (GDPR) and its review of the Privacy Shield.

#### **NEW GDPR GUIDELINES**

The WP29 adopted guidelines to support the implementation of the GDPR. These documents are open for public consultation for a period of 6 weeks before their final adoption.

More specifically, WP29 welcomes comments on its:

Working document on Adequacy Referential

- Working Document with the elements and principles for Binding Corporate Rules
- Working Document with the elements and principles to be found in Processor Binding Corporate Rules
- Guidelines on Consent
- Guidelines on Transparency

The first three documents provide guidance on mechanisms under the GDPR to transfer personal data outside the EU. The guidelines on consent provide more information on how to apply one of the six bases under the GDPR to process personal data. Finally, the transparency guidelines explain how to apply this overarching obligation under the GDPR.

Comments can be send to: JUST-ARTICLE29WP-SEC@ec.europa.eu and presidenceg29@cnil.fr.

WP 29 is expected to adopt further guidelines on certification and on derogations for data transfers at its February plenary meeting.

You can find more information on what the GDPR means for you in Accountancy Europe's factsheet <u>What do</u> the new EU data protection rules mean for you?

#### WP29 CASTS SHADOW OVER PRIVACY SHIELD

The WP29 <u>reviewed</u> the EU-US Privacy Shield adequacy decision. The Privacy Shield is one of the main tools for businesses to transfer personal data from the EU to the US.

WP29 identified significant concerns and calls for an action plan from the Commission and the US to demonstrate that these concerns will be addressed. The data protection authorities provide 2 deadlines:

- 'prioritized concerns' need to be resolved by 25 May 2018, when the General Data Protection Regulation starts to apply
- other concerns need to be addressed by the second annual review of the Privacy Shield, which is expected for Autumn 2018

The data protection authorities will challenge the Privacy Shield in court if their deadlines are not met.

To recall, the Privacy Shield was set up because its predecessor was struck down in court. Nonetheless, the extra privacy measures of the Privacy Shield are considered insufficient by several stakeholders. As a result, there are already two ongoing court cases against the Privacy Shield.

However, according to the Commission's first annual review, the Privacy Shield ensures an adequate level of data protection. For more information on this review, see our <u>Tech Update of 6 November</u>.

Given the controversy of the Privacy Shield, it is advisable for EU accountancy practitioners that store or process personal data in the US to closely follow these developments.

## **ENISA COMMENTS ON GDPR COMPLIANCE ASSESSMENT TOOLS**

On 27 November, the European Union Agency for Network and Information Security (ENISA) <u>published</u> an overview of the challenges and opportunities of data protection certification mechanisms as introduced by the General Data Protection Regulation (GDPR). The report aims to familiarise data protection experts with certification terminology and to clarify concepts which are relevant to the GDPR certification.

Accountancy practices can demonstrate that their data processing is compliant with the GDPR by adhering to approved certification schemes. The use of such schemes is voluntary.

GDPR certification schemes must apply to the data processing activity and be 'goal-oriented'. I.e. it is not only about implementing measures, but also ensuring that they are sufficient to be compliant. Consequently, the approach is different from certain existing certification schemes, such as ISO/IEC 27001, which may be more process than goal-oriented.

Certifications can be issued by certification bodies, supervisory authorities, or the European Data Protection Board. The report provides recommendations to these actors to support the development of a harmonised understanding of GDPR data protection certification mechanisms.

The GDPR will apply from 25 May 2018. You can find more information on what the GDPR means for you in Accountancy Europe's factsheet What do the new EU data protection rules mean for you?

#### SAFE IMPLEMENTATION PSD2 ONE STEP CLOSER

On 27 November, the European Commission <u>adopted</u> rules to make electronic payments safer. These rules help implement the Payment Services Directive (PSD2), which aims to modernise the EU's payment services.

The new rules have a double focus.

Firstly, they require payment service providers to develop strong customer authentication (SCA) to reduce payment fraud levels and to protect the confidentiality of users' financial data.

Secondly, the rules provide standards for secure communication between banks and third parties providing payments-related services (TPPs). This is important to support the PSD2 framework for new services linked to consumer payment accounts, such as account information services. This provides opportunities to the accountancy profession.

Under PSD2, consumers and companies will be able to grant TPPs access to their payment data or allow them to initiate payments. This means that banks will have to put in place a secure communication channel that allows for example accountants to access the data that they need to provide clients with an overview of their accounts or to present cashflow analyses. In addition, businesses could be able to authorise payments within their accountancy software environment.

The European Parliament and the Council have three months to oppose the proposed rules. If they do not do this then the rules will be published in the Official Journal of the EU. Banks and other payment services providers will then have until September 2019 to put the measures in place. PSD2 will apply from 13 January 2018.

#### **COUNCIL DEBATES FREE FLOW OF DATA**

The Telecommunications Council <u>welcomed</u> on 4 December the Commission's proposal on the free flow of data. This initiative aims to set out a clear legal framework under which non-personal data could move freely across borders in the EU. The proposal complements the General Data Protection Regulation (GDPR), which regulates the processing of personal data. For more information on the proposal, see our <u>Tech Update of 4 October</u>.

Some Member States thought that further work is necessary to define non-personal data. For the Commission, this is everything that is not personal data as defined in the GDPR. In addition, Ministers had questions on what to do with mixed data sets, which include both personal and non-personal data. For example, company data that includes profit and loss statements, as well as employee salaries. The Commission thinks that the GDPR should apply when there is any doubt.

Moreover, there was discussion about when restrictions to the free flow of non-personal data are justified. According to the Commission proposal, this would be possible for the sake of public security. Some Member States wanted to clarify this concept or widen the possibilities for restrictions.

The Council Presidency intends to reach an agreement within the Council by the end of the year and an agreement with the Parliament by mid-2018.

## MEMBER STATES SUPPORT COMMISSION CYBER SECURITY PLANS

On 20 November, the Council welcomed the Commission's Cyber Security Strategy (See <u>Technology Update</u> of 4 October). Member States supported the Proposal to strengthen the EU's cybersecurity watchdog ENISA and to set up a EU cybersecurity certification framework.

Among other things, Ministers were in favour of:

- increasing EU efforts in cybersecurity research
- strengthening cryptography
- providing the necessary law enforcement tools to tackle cybercrime
- developing an EU-level response to large-scale cyber incidents and crises

Nonetheless, the Council was careful to underline that each Member State is responsible for its own cybersecurity.

These Conclusions will be implemented by the means of an Action Plan that should be adopted before the end of 2017.

#### COUNCIL ADOPTS CONCLUSIONS ON THE TAXATION OF THE DIGITAL ECONOMY

EU Member States approved their long-awaited <u>conclusions</u> on the taxation of the digital economy. They constitute a *de facto* mandate for the Commission's actions in this area, and will guide EU negotiations at the OECD level.

A Commission proposal is currently expected for 28 March. It will likely consist of two elements: (i) proposals for a short-term EU solution and (ii) a proposal for a long-term solution possibly in the form of amendments to the CCCTB Directive.

For more information, see our Tax Policy Update of 11 December.

## **ACCOUNTANCY INITIATIVES**

If you would like to share your latest technology-related initiative, please contact Willem or Robin

#### **IDW PROMOTES DIGITAL COMMUNICATION SOLUTIONS FOR AUDITORS**

IDW <u>started</u> a joint-venture with software firm Devatax to develop a cloud-based solution to enable auditors to interact digitally with their clients.

Among other things, this tool will allow:

- clients to upload their documents on a shared platform
- auditors to have easier access to the client's documents
- automation of external confirmation requests

These and other features are expected to save time and money for both auditors and their clients.

### **GBNED: ICT ACCOUNTANCY SOFTWARE GUIDE FOR 2018**

The Dutch consultancy firm GBNED released its ICT accountancy software guide for 2018. The study provides an overview of the software available to the accountancy profession in the Netherlands.

One of the most interesting findings relates to the software to support the profession in its role as trusted advisor, such as management dashboards and strategic software. The study finds that the offer of such software has decreased.

This is attributed to the end of the recession; accountancy practitioners are less pressed to re-orient from compliance to advisory. Another potential reason is that more accounting software are offering functions such as a management dashboard.

## **ROBOTS ARE TAKING OVER**

Technology is getting so much news coverage that it starts becoming difficult to keep track of what is happening or relevant. To help you navigate this ever-expanding information stream, we offer you our selection of articles that we found most interesting. Is there an article missing that you think should be part of this list? Please send it to <u>Willem</u> or <u>Robin</u> and we will include it in our next update!

- Cryptocurrencies can never drive out money ECB's Constancio, Reuters
- Commission conducting review of all foreign data transfer deals, Euractiv
- ESMA highlights ICO risks for investors and firms, ESMA
- Policy analysis with big data, Speech by Benoît Cœuré, Member of the Executive Board of the ECB
- Robots must up their game to solve real problems, Financial Times

## **ABOUT ACCOUNTANCY EUROPE**

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