### **UPDATE**





### 27 March 2018

#### **POLICY DEVELOPMENTS**

#### COMMISSION STARTS LOSING PATIENCE OVER PRIVACY SHIELD

European Commissioner for Justice, Vera Jourova, exchanged views on the Privacy Shield with the European Parliament on 5 March. The latter is a crucial tool for businesses to transfer EU personal data to the US, while remaining compliant with EU data protection rules.

During the debate, the Commissioner stressed that she wants a fully independent office in the US administration to deal with the data complaints of Europeans. Ms. Jourova warned that the Commission will suspend the Privacy Shield if it is not fully implemented.

The Commission is not the only one that is losing patience. The group of EU national data protection authorities (WP 29) has threatened to go to European Court of Justice if their concerns are not addressed in time. Some NGOs were not so patient and already brought legal action against the Privacy Shield.

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. You can find more information on these developments in our dedicated <u>GDPR special</u>.

#### EU ACKNOWLEDGES IMPORTANCE OF DATA FLOWS AFTER BREXIT

On March 23, the European Council (EU27) officially acknowledged the progress made by in the Brexit negotiations and adopted guidelines on the future EU-UK relationship.

The guidelines stress that the future relationship should include rules on data because of the importance of data flows between the EU27 and the UK. The European Council wants to govern personal data protection via Union rules on adequacy.

To recall, the UK will become a third country after Brexit. Personal data will then no longer be able to freely flow to the UK unless it can be proven that it will enjoy adequate protection. You can find more information on the implications of Brexit for data flows in our dedicated <u>GDPR special</u>.

#### RAPPORTEUR ON COLLISION COURSE WITH COUNCIL OVER FREE FLOW OF NON-PERSONAL DATA

European Parliament Rapporteur Anna Maria Corazza Bildt (EPP, Sweden) published her <u>draft report</u> on the proposal for an EU Regulation on the free flow of non-personal data. This draft report will serve as the basis for developing the European Parliament's position.

#### **KEY ISSUES**

The Rapporteurs draft report deviates from the Council's position on three important issues.

Unlike EU Member States, the rapporteur believes that the public sector should not be exempted from the scope of the proposed Regulation.

Moreover, the draft report states that the proposed Regulation should apply to mixed data sets where it is technically impossible to unbundle the personal and non-personal data. This would give it precedence over the General Data Protection Regulation (GDPR). This position is opposed from different sides, including the socialists group in the European Parliament, the EU Council of Ministers, and the European Commission.

The rapporteur also wants to weaken the wording on facilitating the switching of cloud service providers. The Commission proposed to let the industry develop self-regulatory codes of conduct. However, Ms Bildt considers that the Commission is too prescriptive on what should be in those codes and wants to double the time for developing these codes to two years.

#### **BACKGROUND**

This EU 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 GDPR, which regulates the processing of personal data.

This proposal is particularly relevant for the accountancy profession. The Commission <u>identified</u> the accountancy sector as one of the sectors with the most (unjustified) data localisation measures. The proposal will thus affect national taxation and accounting laws that restrict where practitioners can store their data.

Futhermore, the question of switching providers is increasingly relevant for the profession as more accountancy practices move to the cloud. Measures to support professional users are therefore a welcome development. This is especially the case for SMPs, which have a lower bargaining power towards providers.

The Council and the Parliament must agree on the text before it can enter into force. The Council adopted its position last December.

For more information on the proposal, see our Tech Update of 4 October.

# COMMISSION ADVISORY GROUP CALLS FOR ETHICAL FRAMEWORK FOR NEW TECHNOLOGIES

The European Group on Ethics in Science and New Technologies (EGE) released on 9 March a <u>statement</u> calling for a process to come up with a "common, internationally recognised ethical and legal framework for the design, production, use and governance of artificial intelligence, robotics, and 'autonomous' systems." The EGE is concerned that the current efforts in this area are too fragmented and could lead to 'ethics shopping'.

Moreover, EGE provided a set of fundamental ethical principles to guide efforts towards a global ethical framework. These principles are based on the values of the EU Treaties and the EU Charter of Fundamental Rights.

The EGE is an independent advisory body to the President of the European Commission.

The report refers to the work that has already been done in this area, including by the Institute of Electrical and Electronics Engineers (IEEE). On 19 June, Sr. Director Clara Neppel from the IEEE will join Accountancy Europe's Digital Day as part of a panel that will focus on the ethical implications of the latest technological developments. For more information, click <u>here</u>.

#### **CAMBRIDGE ANALYTICA THRILLER TRIGGERS STRONG REACTION FROM BRUSSELS**

The New York Times and the Observer revealed how data analytics company Cambridge Analytica allegedly got illegal access to millions of Facebook users' personal data.

The story triggered a strong response at EU level, most notably from the Article 29 Working Party (WP29). The latter brings together national data protection authorities (DPAs), the Commission and the European Data Protection Supervisor (EDPS).

The WP29 Chair Andrea Jelinek <u>stated</u> that this is a 'very serious allegation with far-reaching consequences'. She explained that the UK's DPA is investigating this matter and that the members of the WP29 will work together in this process.

In a parallel development, the EDPS <u>published</u> an opinion piece in which it expressed concern that the pervasiveness of big data analytics and artificial intelligence is leading to manipulation of people's minds and may undermine our democracy.

Furthermore, the European Council adopted on 22 March its <u>conclusions</u> on Digital Europe. Instead of starting with the benefits of digitalisation, the Heads of State and Government opened their statement with: "Social networks and digital platforms need to guarantee transparent practices and full protection of citizens' privacy and personal data." Enforcement of legislation in this area will be high on the agenda in their next informal meeting in May.

Finally, the European Parliament (EP) intends to also launch an investigation into this issue.

#### **G20 DISCUSSES CRYPTOCURRENCIES**

The G20 published on 20 March the <u>communiqué</u> of its meeting on 19-20 March, which focused on the use of crypto-assets such as Bitcoin. This is in response to a request from France and Germany to discuss the policy and monetary implications of virtual currencies in the G20.

G20 members pointed out that crypto-assets raise issues on tax evasion, money laundering and terrorist financing. Therefore, they committed to implement the Financial Action Task Force (FATF) standards for crypto-assets.

The communiqué acknowledged that crypto-assets could at some point have financial stability implications. Hence, G20 members called on international standard-setting bodies to continue monitoring crypto-assets and to assess multilateral responses as needed.

Both the FATF and the Financial Stability Board are asked to report in July 2018 on their work on crypto-assets.

Cryptocurrencies are increasingly coming under scrutiny. The European Commission launched earlier this year an EU Blockchain Observatory and Forum. Moreover, the European Supervisory Authorities (ESAs) formally warned consumers about Virtual Currencies. See also our <u>February Tech Update</u>.

#### **COMMISSION PROPOSES TO TAX THE DIGITAL ECONOMY**

The European Commission published two proposals for the taxation of the digital economy:

- A long-term <u>proposal</u> to establish rules for "digital presence"
- A short-term <u>proposal</u> to introduce an interim turnover tax on the provision of certain types of digital services

The long-term proposal seeks to introduce the concept of digital presence into the tax system. This should enable subjecting business activities to corporate tax when they generate significant digital value in a jurisdiction without having lots of physical investments, plants, resources, or work force. For example, companies such as Google, Facebook, or Amazon.

However, many individual Member States are growing impatient and do not want to wait for the inevitably lengthy negotiations on a digital permanent establishment to be concluded before taxing digital businesses.

Therefore, the Commission also proposes an EU-wide short-term tax on turnover on certain digital services. This should ensure that individual Member States do not go ahead with national, unilateral digital tax provisions that risk fragmenting the Single Market.

#### OECD PUBLISHES INTERIM REPORT ON THE TAXATION OF THE DIGITAL ECONOMY

The OECD published on 16 March its long-awaited interim report on the taxation of the digital economy. The report is expected to guide the OECD's work on a comprehensive solution for taxing the digital economy. Final proposals are expected in 2020. The report was approved by the 113 jurisdictions from the so-called Inclusive Framework. For more information, see our <u>Tax Update</u> of 5 - 16 March.

#### **ACCOUNTANCY INITIATIVES**

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

#### **ACCA – ICOS: REAL DEAL OR TOKEN GESTURE?**

This <u>report</u> looks at the background, risks and regulation of Initial Coin Offerings (ICOs). Moreover, it also analyses how ICOs relate to professional accountants.

ICOs are an increasingly popular new way for organisations to raise capital. ICOs raised \$4bn in funds in 2017. However, there are also risks to ICOs, such as fraud or money laundering.

Many ICOs have so far fallen outside existing securities regulation because they work with cryptocurrencies, such as Bitcoin. However, policy-makers have started to look more closely at their regulatory status.

"Accountants should keep track of announcements from regulators in their jurisdictions. If they are engaged in offering services to start-ups or in capital market transactions they will need a more thorough understanding of the regulations affecting those ICOs that are deemed to be securities." ACCA

## ACCOUNTANCY EUROPE MEMBERS' WEBINAR: HOW TO GET YOUR SME ACCOUNTANTS GDPR READY?

On 16 March we organized a webinar for our Members on helping SMPs with the General Data Protection Regulation (GDPR). During an interactive discussion, we looked at issues such as GDPR awareness levels and awareness-raising good-practices.

You can find more information about the outcome of our webinar <u>here</u>. You can also consult our <u>GDPR update</u> for an overview of the latest policy developments in this field.

#### **ROBOTS IN THE NEWS**

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.

- Europe's New Privacy Law Will Change the Web, and More, Wired
- Cambridge Analytica boasts of dirty tricks to swing elections, The Guardian
- Cryptocurrencies: Last Week Tonight with John Oliver, HBO
- EU plans to pull 'free' digital services under consumer protection rules, Euractiv

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!

#### **ABOUT ACCOUNTANCY EUROPE**

Accountancy Europe unites 51 professional organisations from 37 countries that represent **1 million** professional accountants, auditors and advisors. They make numbers work for people. Accountancy Europe translates their daily experience to inform the public policy debate in Europe and beyond.

Accountancy Europe is in the EU Transparency Register (No 4713568401-18)