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PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

Disclosure of personal data in M&A due diligence phase

Data protection laws play a role in most mergers and acquisitions transactions because all companies process personal data.

By **Lore Leitner** and **Elli Laine** of Wilson Sonsini Goodrich & Rosati.

For a long time, data protection issues have been overlooked in mergers and acquisitions (M&A) transactions due to a general lack of awareness around privacy issues combined with limited enforcement. However, with the introduction of the General Data

Protection Regulation (GDPR) in May 2018, the data protection rules are now enhanced by stronger enforcement powers and more significant sanctions.

The GDPR imposes different

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GDPR EU Representative – the “hidden obligation” and Brexit

Does your company require an EU Representative? **Tim Bell** from DPR Group discusses the issues.

“What’s a Representative?”, “Ah, you mean the DPO?”, “We don’t process any data in the EU, so we’re fine”.

It can be frustrating when attempting to discuss the role of the EU Data Protection Representative obligation under Article 27 of GDPR

with companies which may require it, and sometimes even with fellow privacy professionals, but the lack of awareness of this requirement is relatively understandable. Now, as with so many other business activities, “Brexit” is adding an extra level of

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PUBLISHER

Stewart H Dresner
stewart.dresner@privacylaws.com

EDITOR

Laura Linkomies
laura.linkomies@privacylaws.com

DEPUTY EDITOR

Tom Cooper
tom.cooper@privacylaws.com

REPORT SUBSCRIPTIONS

K'an Thomas
kan@privacylaws.com

CONTRIBUTORS

Tim Bell
DPR Group

Lore Leitner and Elli Laine
Wilson Sonsini Goodrich & Rosati, LLP

Oliver Butler
Oxford University

David Smith
Allen & Overy, LLP

Alan Shipman
Group 5 Training Limited

**Rob Sumroy, Duncan Mykura and
Ian Ranson**
Slaughter and May

Karishma Brahmhatt
Allen & Overy LLP

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Privacy Laws & Business, 2nd Floor,
Monument House, 215 Marsh Road, Pinner,
Middlesex HA5 5NE, United Kingdom

Tel: +44 (0)20 8868 9200

Email: info@privacylaws.com

Website: www.privacylaws.com

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Preparing for Brexit: Some certainty amongst uncertainty

In this issue, we look at some of the implications of Brexit for data protection (p.9). The government has issued draft regulations to ensure that the UK data protection regime continues to function after Brexit. The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 replace the GDPR's references to EU institutions with UK equivalents where applicable. This "UK GDPR" is 61 pages long and apart from these amendments, it includes some provisions that organisations need to be aware of, for example on territorial application. The UK GDPR would apply to a controller or processor which is based outside of the UK, but is processing personal data of people within the UK in connection with the offering of goods and services to them. This leads to the question of appointing a Representative (p.1).

The UK's former Deputy Information Commissioner, David Smith, makes clear that despite Brexit, the UK will remain a party to the European Convention on Human Rights, favourable to any adequacy application (p.11). Standards will remain unaffected by Brexit and the British Standards Institution should remain a full member of the European Standards Organizations (p.16).

Mergers and acquisitions are commonplace in today's business environment. The GDPR imposes different obligations on both sellers and buyers which must be dealt with at different stages of M&A transactions. Our correspondents shed light on typical data disclosure issues in M&A transactions' due diligence phase (p.1).

With regard to blockchain, while some applications of blockchain technology will almost certainly end up not being GDPR compliant, GDPR-compliant solutions can be achieved, our correspondents say (p.18).

Lastly, the ICO wants to get Adtech stakeholders talking, and organised a fact-finding event last week. With more than a hundred people attending – publishers, advertisers, lawyers and adtech firms – this is a start for finding some consensus for rules in the sector (p.21). The ICO is also preparing to start its Sandbox programme to facilitate innovative companies' work whilst staying within DP law (p.23).

Laura Linkomies, Editor

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Steve Wright, formerly Data Privacy & InfoSec Officer, John Lewis Partnership

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