European data protection reform threatens economic growth

The majority of the 220 million employees in the European Union depend on the effective marketing of the goods they produce and the services they render. The current status of the negotiations of the European data protection reform, however, threatens to curtail established marketing channels through undue bureaucratic overregulation. The German Federal Statistic Office looked at the effect of some of the provisions and confirms that the proposed Regulation will cost German businesses EUR 1.5 billion in the first year alone, apart from the running costs of EUR 1 billion per year following the implementation. This was reported, for example, in yesterday’s Süddeutsche Zeitung. The German Direct Marketing Association (Deutscher Dialogmarketing Verband e.V. - DDV) calls for a more balanced approach for the reform of the European data protection law.

On 15/16 June 2015, the Ministers for Justice and the Interior in the Council of the European Union plan to agree on their main positions with respect to the reform of the European data protection law, in order to allow negotiations with the European Parliament to start. In preparation for the Council meeting, the Member States currently negotiate a number of compromises which may impact the European economy heavily. From a marketing point of view, the main focus of the debate lies in the future ability to effectively contact existing as well as potential new customers.

Depending on the results of the negotiations in the Council, the following restrictions – in comparison to the existing data protection law in Germany – may arise in relation to the acquisition of new customers:

1. Address data from publicly accessible directories cannot be used.
2. The ability to sensibly select addressees for tailor-made offers will be limited.
3. Companies will not be able to exchange address data with other companies.
4. There will be insufficient flexibility for marketing between companies (B2B).
5. Charity organizations will not be able to exchange address data for fundraising purposes.
6. Prior to selecting address data for marketing purposes, the addressees have to be informed about the data processing and their right to object, even if they do not receive any marketing material.

Such strict prohibitions can only be overruled by obtaining declarations of consent. It is, however, in practice close to impossible to gain such consent from potential new customers. These types of limitations would mainly hit small and medium-sized companies. For many of them, it will be impossible to successfully deal with the bureaucratic challenges. Thus, without effective means to advertise goods and services, the European market will not be accessible for small and medium-sized companies. They will have to fear for their existence and will not be in the position to contribute to the economic growth in the European Union.

Pursuant to current German law, it is lawful to sensibly select address data of potential new customers and provide them with tailor-made offers. Companies may also use addresses listed in
publicly accessible directories for such purposes. There is adequate leeway for advertising between companies and for fundraising. In addition, companies have the right to mail the marketing materials for other companies and to exchange address data.

At the same time, a high level of data protection is in place in Germany. There are sufficient transparency obligations and the addressees have a permanent right to object. In addition, a number of restrictions for electronic forms of marketing (by email, telefax or telephone) are in place. In relation to internet services, pseudonymized data shall be used. Very sensitive user profiles must only be used if the data subject has consented.

“The existing balance between a high data protection standard and functioning rules for the economy, which has developed in Germany over many years, is now at stake, depending on the results of the present negotiations in Brussels. We certainly welcome increased European harmonization of data protection law, but it should foster further development of the economy and not hinder it unduly.” says Patrick Tapp, president of the DDV.

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Pressekontakt:
DDV Deutscher Dialogmarketing Verband e.V. (DDV)
Boris von Nagy, Leiter Presse- und Öffentlichkeitsarbeit
Hahnstr. 70, 60528 Frankfurt am Main
Telefon: (069) 401 276 513, Fax: (069) 401 276 599
b.vonNagy@ddv.de
http://www.ddv.de