



The Data Protection Code of Conduct for Cloud Service Providers and the Right to Data Protection

Effectiveness of the Self-regulatory Instrument and Its Future

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Structure

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Introduction

- ❖ About myself
- ❖ Research aims
- ❖ Research question:

To what extent is the Code of Conduct for Cloud Service Providers effective in ensuring the right to data protection in accordance with the EU data protection framework?

- ❖ Hypothesis
- ❖ Methodology and approach
- ❖ The research project funded by the Hague Institute for the Internationalisation of Law (“HiiL”) on transnational private regulation



Code of Conduct

- ❖ The strategy “Unleashing the Potential of Cloud Computing in Europe” launched by the European Commission
- ❖ Article 27 of the Directive 95/46/EC and Article 40 of the General Data Protection Regulation (“GDPR”)
- ❖ Drafted by a Subgroup on the code of conduct of the Cloud Select Industry Group (“C-SIG”)
- ❖ The Code of Conduct in a nutshell: purpose, business-to-business cloud services, cloud service providers, the governance system



Data Protection

- ❖ The right to data protection in the EU:
Article 16 of the Treaty on the Functioning of the EU and Article 8 of the EU Charter of Fundamental Rights
- ❖ The *Schrems* decision of the CJEU
- ❖ Transfers of personal data to third States and international organisations when there is no adequacy decision



Legitimacy

- ❖ Objectives of the Code, its legal basis and involvement of the European Commission
- ❖ Inclusion
- ❖ Procedural transparency
- ❖ Accountability

Conclusion with regard to legitimacy:

The Code of Conduct can be seen as a fairly legitimate self-regulatory process



Quality

- ❖ Precision, accessibility and practicability of the standards
- ❖ Consistency of the norms
- ❖ Complementarity

Conclusion with regard to quality:

The Code of Conduct contains regulatory norms of a reasonably high quality



Enforcement

- ❖ *Ex ante* enforcement mechanisms
- ❖ *Ex post* compliance mechanisms

Conclusion with regard to enforcement:

The aspect of enforcement is still underdeveloped



Effectiveness

- ❖ Formal and substantive effectiveness:
potential substantive effectiveness
- ❖ Factors influencing effectiveness, such as
private interests of the involved actors,
commitment and capacity of the industry and
pressure and oversight exercised by
governments
- ❖ Legitimacy, quality and enforcement aspects



Conclusion

- ❖ The Code of Conduct makes a strong claim for becoming an effective self-regulatory instrument
- ❖ Legitimacy and quality require some improvement and enforcement mechanisms need to be further developed
- ❖ To be improved: level of inclusion, focus on the GDPR, primacy of data subjects' rights to privacy and data protection, more precise and specified provisions, coherent policies of Competent Bodies

Thank you!