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

- \textit{Ex ante} enforcement mechanisms
- \textit{Ex post} compliance mechanisms

\textbf{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!