

Access Now comments to the Republic of Austria's consultation on "the adaptation to the General Data Protection Regulation"

- *Datenschutz-Anpassungsgesetz 2018* -

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Access Now is an international organisation that defends and extends the digital rights of users at risk around the world. We are a team of 40, with local staff in eleven locations around the world. We maintain four legally incorporated entities - Belgium, Costa Rica, Tunisia, and the United States - with our tech, advocacy, policy, granting, and operations teams distributed across all regions. By combining innovative policy, user engagement, and direct technical support, we fight for open and secure communications for all.

We defend privacy globally. Access Now provided comments on the development and implementation of data protection and privacy rules in the Brazilian Marco Civil,¹ the African Union Convention on Cyber Security and Personal Data Protection,² and the US Federal Communications Commission proposed broadband consumer privacy rules.³ In the EU, we have been involved in the EU Data Protection Reform process since the tabling of the General Data Protection Regulation (GDPR) by the EU Commission in January 2012. Access Now hereby provides comments to the proposed "adaptation to the GDPR" by the Republic of Austria through the *Bundesgesetz, mit dem das Bundes-Verfassungsgesetz geändert, das Datenschutzgesetz erlassen und das Datenschutzgesetz 2000 aufgehoben wird (Datenschutz-Anpassungsgesetz 2018)*.⁴

Robust, effective and harmonised enforcement mechanisms

The GDPR provides harmonised and upgraded data protection rights for users across the EU to put them back in control of their personal information. The legislation also reduces administrative burdens for companies offering services across the EU and clarifies their obligations and responsibilities. The full potential and benefits of this legislation, both for users and industry, can only be delivered by robust, effective and harmonised enforcement. This means for instance ensuring users' access to justice and redress mechanisms.

Currently, it is no secret that the level of enforcement of the Data Protection Directive 1995/46/EC varies widely across the EU. This has enabled foreign companies to base their operations in countries with soft enforcement mechanisms where data protection authorities have somewhat limited powers and resources. By doing so, companies aim to reduce compliance costs but this is often done at the expense of users' rights. Nowadays, several data protection violations remain unsanctioned or the fines are so low that they do not serve as a disincentive for companies from breaching the law.

1 Access Now, Brazil must protect the Marco Civil regulatory decree, June 2016.

<https://www.accessnow.org/brazil-must-protect-marco-civil-regulatory-decree/>

2 Access Now, African Union adopts framework on cyber security and data protection, August 2014.

<https://www.accessnow.org/african-union-adopts-framework-on-cyber-security-and-data-protection/>

3 Access Now, Comments on the FCC Notice of Proposed Rulemaking on protecting the privacy of customers of broadband and other telecommunications services, May 2016.

https://www.accessnow.org/cms/assets/uploads/2016/05/NPRM-PrivacyofBroadbandCustomers_-_Access-Now.pdf

4 Republik Österreich, Datenschutz-Anpassungsgesetz 2018, May 2017.

https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00322/fname_635512.pdf

The GDPR provides for a unique opportunity to address the crucial issue of strong and harmonised enforcement. In order for the GDPR to achieve maximum impact of strong data protection safeguards, all member states, including the Republic Austria, should adopt the following components of the GDPR in their “adaptation of the national law”.

Empower DPAs. The GDPR has created the “consistency and cooperation mechanism” and the European Data Protection Board. It has also increased the responsibilities of the DPAs, including the possibility to impose significant fines with a strong deterring effect. To ensure effective enforcement powers, the Republic of Austria should guarantee the complete independence of the national authority and allocate adequate resources. This means for instance providing sufficient budget for staff and investigations, as well as promoting transparency of their activities.

Ensure NGO representation and collective redress. The 2015 EuroBarometer indicated that only 37% of the respondents were aware of the existence of data protection authorities and even most of those respondents did not know how to seek assistance and redress.⁵ Extending avenues for remedies in case of data protection violations through NGO representation can empower users to exercise their rights more effectively. Cases brought by NGOs will strengthen individual complaints and can complement ex officio investigations of the DPAs.

Provide the right to lodge a complaint for NGOs independently of a data subject's mandate. Several other member states have already included collective redress regarding certain organisations referred to in Art. 80 (1) GDPR in their respective national legislation to adapt their national law to the GDPR. If Austria fails to provide for such avenues laid down in Art 80 (2) GDPR, this will lead to fragmentation in the protection of personal data across the EU. It will also mean that Austrian users could in general be less protected than German citizens, for instance, when an Austrian data controller infringes the rights of data subjects provided by the GDPR and there is no possibility to for Austrian civil or consumer rights NGOs to hold companies or corporations accountable for their infringements of the GDPR. Under such scenario, Austrian companies operating in the EU could be sued more easily by NGOs and in courts outside Austria than within the country.

Conclusion

Access Now welcomes the opportunity provided by the Republic of Austria to submit comments on the “adaptation to the General Data Protection Regulation” in the public consultation procedure. Austria decided to abstain during the final vote on the GDPR in the Council due to weaknesses in certain areas of user protection. Therefore, we are confident that the government and the Austrian Parliament will now uphold the maximum level of protection for users by ensuring robust, effective and harmonised enforcement mechanisms.

For More Information

Please visit www.accessnow.org

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⁵ European Commission, Data Protection EuroBarometer, June 2015.

http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_eurobarometer_240615_en.pdf