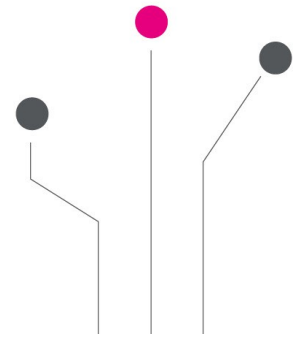


to the point technology & digitalisation



August 2020

Preface

Summertime and the livin' is easy

Well, is it? This year we are collectively going through an exceptional summer: some countries are still struggling with very high COVID-19 infection rates. Life is not back to normal. Home office is still a fact for many of us. Group leisure activities are on hold or at least socially frowned upon. The well-deserved summer trip is cancelled. And in the middle of all that, the ECJ even put a "travel ban" on EU data. Again!

With its landmark decision on the legitimacy of international transfers of personal data (Rs C 311/18), the ECJ had to decide on those two GDPR safeguard mechanisms which were in practice most common: the EU-US-Privacy Shield and the European Commissions' Standard Contractual Clauses. The ECJ declared international data transfers based on the EU-US Privacy Shield invalid – effective immediately. Even though the Standard Contractual Clauses survived, the ECJ significantly increased the obligations on companies for such data transfers and demands additional safeguard measures. With this, the ECJ has shaken legitimacy for international data transfers once again. In practice, however, such transfers have become an indispensable part of our daily lives.

If you are interested in further details about the ECJ decision, check out the [article by our colleague Günther Leissler](#).



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The data protection info corner below contains practical tips on how to react to this decision:

- ✓ Get an up-to-date overview of your international data transfers and the legal grounds those transfers are based on
- ✓ Keep an eye on the topic (opinions of data protection authorities, courts, European Commission)
- ✓ Conduct a review of the law of the country where the data recipient is located
 - Check whether public authorities have access to the personal data of EU data subjects
 - Make a risk assessment in relation to the data transferred (are they sensitive data, are the security standards [e.g. encryption technologies] up to date, how many data / data subjects are concerned?)
- ✓ Avoid / erase "classical" errors in Standard Contractual Clauses
 - Be aware: It's a contract!
 - Make yourself familiar with the content of the contract
 - Check the level of detail of the Annexes
- ✓ Determine which additional safeguards you need
- ✓ Keep your executive board members in the loop
- ✓ Don't panic!

To the Point:

- **Foreign Direct Investments (FDI) – A bump for technology transactions?**

FDI screening was for a long time a blank spot on the regulatory landscape for most countries in Central Eastern Europe (CEE). Member States across CEE have – also due to COVID-19 – recently tightened or enacted new measures or initiated legislative processes to do so. Going forward, many foreign investments in critical sectors, in particular in the technology sector, will have to undergo a vetting process.

To help navigate through the FDI regulations in CEE, we have put together an online booklet with an up-to-date overview of the currently existing FDI regimes in CEE. Following the trend to tighten or set up FDI screening mechanisms, it will also keep pace with ongoing developments in jurisdictions where new rules are in the pipeline (Austria, Croatia, Czech Republic, Poland and Romania) and therefore be continuously updated. [Visit our website](#) for further information.

[Thomas Kulinigg](#)

- **Apple and Google app stores in the antitrust spotlight**

Apple's App Store has come under intensified antitrust scrutiny following a lawsuit brought by Epic Games, the company behind Fortnite, a hugely popular online game, before a US court. In parallel to the complaint against Apple, Epic Games has also sued Google over identical grounds.

The lawsuit is based on the same grounds as Spotify's complaint to the European Commission in March 2019 about the 30 % commission Apple charges developers for in-app purchases. Spotify's complaint (relating to music streaming) was preceded by a similar complaint by Rakuten concerning Apple's purportedly abusive 30 % commission on e-books sold through the App Store.

Following the complaints, the Commission opened a formal investigation into Apple a few weeks ago (see [here](#)), specifically looking at:

- the mandatory use of Apple's own proprietary in-app purchase system "IAP" for the distribution of paid digital content. Apple charges app developers a 30 % commission on all subscription fees through IAP;
- restrictions on the ability of developers to inform users about alternative purchasing possibilities outside of apps.

[Christoph Haid](#)

- **UK report on online platforms and digital advertising**

In July, the UK competition authority published the final [report](#) on its study of online platforms and digital advertising. The authority consulted on, and studied in detail, a range of potential interventions to improve competition between platforms funded by digital advertising, including a code of conduct to govern the behaviour of platforms with market power, rules to give consumers greater control over their data, and interventions to address the sources of the market power of large platforms.

The authority concluded that: "[our] current tools, which allow us to enforce against individual

practices and concerns, are not sufficient to protect competition. [...] Tackling such issues requires an ongoing focus, and the ability to monitor and amend interventions as required." The authority therefore continues to advocate for a new regulatory regime for online platforms, to be implemented by a dedicated regulatory body, empowered to enforce a code of conduct on platforms and to impose a range of pro-competitive interventions.

[Christoph Haid](#)

- **UN Regulation on Level 3 Lane Keeping System**

The Uniform provisions concerning the approval of vehicles with regard to Automated Lane Keeping Systems, a UN Regulation, were adopted by more than 60 countries at the end of June. It is the first binding international regulation on level 3 vehicle automation.

Some of the key points of the binding UN Regulation are that i) the driver must be in the driver's seat with their seatbelt fastened, ii) the driver must be available to take over control, iii) no system failure is detected, iv) the Data Storage System for Automated Driving (DSSAD) – the so-called "black box" – is operational, v) the vehicle is on roads where pedestrians and cyclists are prohibited and which, by design, are equipped with a physical separation that divides the traffic moving in opposite directions. The Automated Lane Keeping System is limited in its current form to a maximum speed of 60 km/h. The UN Regulation is the first binding international regulation on level 3 auto-mated driving.

[Read more in our latest legal insight!](#)
[Sara Khalil and Christoph Haid](#)

- **Registration requirement for virtual currency services also applies to licensed entities**

Companies which would like to provide virtual currency services in Austria (including exchange or transfer of virtual currencies or the storing of cryptographic keys) are required to first register with the Austrian Financial Market Authority (FMA). The FMA has clarified that the registration requirement does not apply merely to unregulated service providers, but also to already-licensed domestic or passported EU service providers (including fully licensed banks, e-money institutions or payment service providers). Non-compliance may trigger significant administrative fines and prohibition of the activities. More information about the registration process can be found [here](#).

[Matthias Pressler](#)

- **Disclosure obligations and liability of UUC platforms in focus**

In the first [to the point: technology & digitalisation newsletter](#) in fall 2019 we reported about referrals to the CJEU concerning disclosure obligations and liability of user uploaded content (UUC) platform providers in relation to illegal (copyright infringing) uploads. While Directive 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive) introduces a new liability regime in relation to copyright

infringing uploads for so called online content-sharing service providers, such regime only concerns specific providers as well as specific infringements, and is not yet applicable. Against this background the referrals concerning the provisions currently in force are and remain of great interest.

[Visit our blog to learn more!](#)
[Dominik Hofmarcher](#)

digitalisation. The law is intended to enable corporate financing by allowing securities to be issued electronically or using blockchain technology. Have a read on this interesting paper under the following link: [Law on Blockchain Bond Maximilian Nutz](#)

For further information, please contact any of the individuals named above, your usual contacts at Schoenherr or any member of our [technology & digitalisation group!](#)

- **New law on electronic communications in Poland**

The Polish Ministry of Digitalisation published a draft Electronic Communications Law (the "Law"), which will regulate the telecommunications (electronic communications) sector in Poland. The Law implements Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018, establishing the European Electronic Communications Code.

The Law aims to regulate (i) activities consisting in the provision of electronic communication services, (ii) the conditions for managing frequencies and numbering resources, (iii) access to telecommunications networks, (iv) rules for the processing of telecommunications data, (v) protection of the confidentiality of electronic communication, (vi) the rights and obligations of users, and many others. Thanks to the Law, issues related to over-the-top services (number-free interpersonal communication) or transmission used for the provision of machine-to-machine communication services or direct billing (additional debiting service) will be regulated for the first time in Poland. Another novelty introduced by the Law is that the scope of documents making up the contract for the provision of electronic communication services must now include pre-contractual information and concise information summarising the terms of the contract. Generally, the Law will serve as a comprehensive set of provisions and rules governing the entire telecommunications sector in Poland.

The Law was submitted for public consultation at the end of July 2020 and as of 31 August 2020 is still under discussion. The Law is supposed to enter into force by the end of 2020.

[Daria Rutecka](#)

- **Starry, starry night – don't go astray!**

The stars in the night sky have been a constant companion of humankind. And even today, although we set foot on the moon and established a constant human presence in space, we still cannot grasp all the mysteries of the night sky. However, soon our vision of the night sky might change. But aren't there any laws in place that protect the night sky's appearance? Or is there even a fundamental human right to starlight?








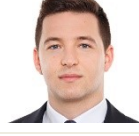


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[Maximilian Trautinger](#)

- **Blockchain on the rise again**

With regard to blockchain, Austria is currently looking to its neighbour Germany, where draft legislation for the "Blockchain Bond" has been proposed. The digitisation of securities is an essential step to keep up in the age of

schönherr

If you have any questions, please contact our legal experts across CEE:

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