The EU General Data Protection Regulation

Jörg Bielefeld
Lawyer, Partner

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There‘s an app for that…

BB Privacy App

http://bit.do/BB_Privacy

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Did you know?

Americans and Germans…

Americans love Acronyms:

GDPR

Germans love lengthy words:

Datenschutzgrundverordung

Scope of the GDPR – relevant for my clients?

Territorial Scope

The Regulation applies to the processing of personal data …

- in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.
- of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to
  - the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
  - the monitoring of their behaviour as far as their behaviour takes place within the Union.

Territorial Scope

Summarized:

- If your business focuses on markets within the EU, GDPR applies to your related data processing.
- You then need to fully comply with all GDPR requirements

Key Definitions

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Key definitions

Term	Definition
Controller	A person who (either along or jointly in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed
Processor	Any person who (other than an employee of the data controller) processes the data on behalf of the data controller
Personal data	Data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller
Data Subject	An individual who is the subject of personal data

Key definitions

Term	Definition
Sensitive or special categories of personal data	Racial or ethnic origin, Political opinions, Religious beliefs Trade Union Membership, Physical or mental health condition, Sexual life, Criminal offences plus biometrics and genetic data
Processing	Recording or holding the information or data or carrying out any operation or set of operations on the information or data
Data Protection/Supervisory Authority	Tasked with the protection of personal data and privacy and take enforcement action against those who do not comply with the data protection law
Children's data	Personal data relating to a children - below the age of 16 then parental guardian consent is needed; above 16 and below 18 then a teenager can consent if privacy notices are in appropriate language

Key Principles

Data Protection Principles

8 Key principles of DP law

Personal data must be…

Processed fairly, lawfully and in a transparent manner **(lawfulness, fairness and transparency)**
Collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes **(purpose limitation)**
Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed **(data minimisation)**
Accurate and, where necessary, kept up to date **(accuracy)**
Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed **(storage limitation)**
In accordance with data subjects' rights **(rights of the data subject)**
Processed in a way that ensures appropriate security of the personal data **(integrity and confidentiality)**
Not be transferred to a third country or to an international organisation if the provisions of the Regulation are not complied with **(transfers)**

What to do now? Pick the low hanging fruits!

GDPR Compliance in Practice – Governance

- Record keeping (Art 30) (data ‘inventory’?)
- Implementing policies
- Training (on the policies)
- Data Protection Officer(s)
- Data Protection Impact Assessments

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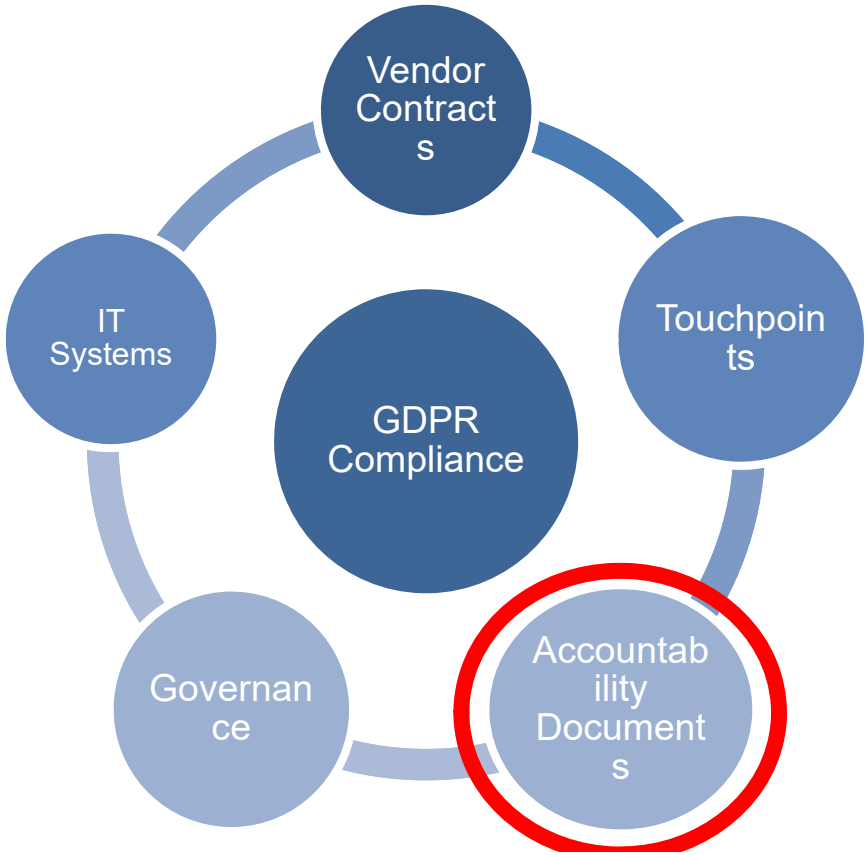
GDPR Compliance in Practice – Accountability



Art 24(2) GDPR: "*Where proportionate in relation to processing activities, the measures referred to in paragraph 1 [i.e. demonstrating compliance] shall include the implementation of appropriate data protection policies by the controller.*"

Overarching data privacy policy

Consumer Data | **HR data**

Vendors | DPIAs | Privacy by Design | Individual Rights | Data Retention | Breach Response

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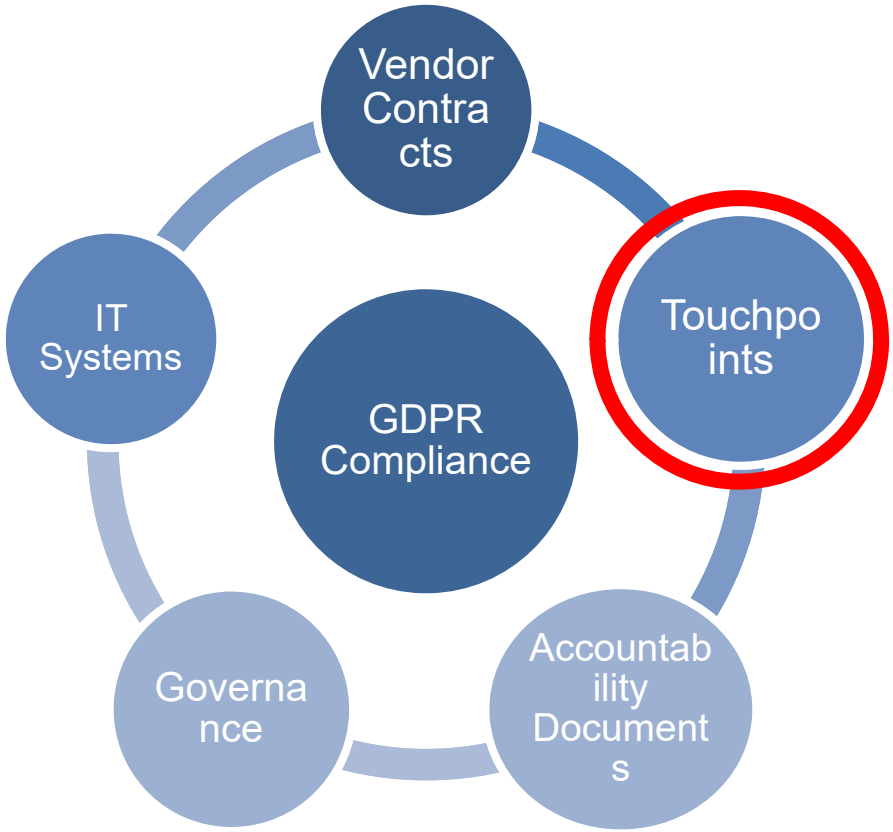
GDPR Compliance in Practice – Touchpoints



- All points at which data enters the business
- Update notices and consent statements
- **Website/Apps:** online privacy notice, cookie notice, marketing consent statements, just-in-time notices, privacy dashboard / preference centre
- Email: Link/footer to privacy notice
- Hard copy forms, Call centres (Pre-recorded messages, scripts)
- Don’t forget Employees and Recruitment as well

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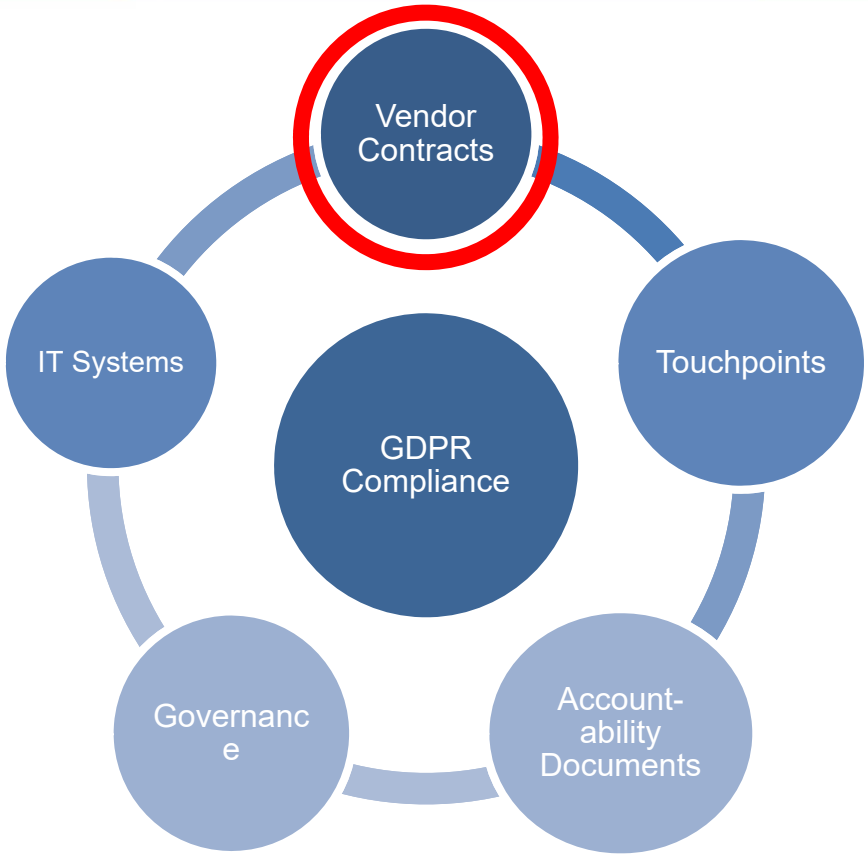
GDPR Compliance in Practice – Vendor Contracts



- Controller and processor both responsible for appropriate terms
- No transition period for updated terms. Review, prioritise and amend your existing contracts
- **De-scope** as many as you can: (i) expires pre-25th May (or 6 months post-May), (ii) no processing, (iii) vendor not a processor, (iv) MSA with no live SOWs, (v) large cloud vendors.
- **Prioritise**: volume/sensitivity of data, business criticality, service portability, duration, location.
- Remember to update templates too for new suppliers
- Send a standard processor addendum out?

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GDPR Compliance in Practice – IT Systems

- **Data security:** Appropriate to nature/risk of data
- **Data minimisation:** Remove unnecessary fields
- **Deletion/anonymization:** Automated process
- **Subject access:** Enable search/extraction
- **Other individuals rights:** Rectification, Erasure, Restriction, Objection, Data portability
- Record of consent
- Withdrawal of consent / Suppression

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What is the risk….?

Fines, Fines, Fines….

Sanctions for non-compliance – two levels of fines…

- Up to the greater of **2%** annual worldwide turnover of preceding financial year or **EUR 10 million** – for matters re internal record keeping, data processor contracts, data protection officers, data protection by design and default

- Up to the greater of **4%** annual worldwide turnover of preceding financial year or **EUR 20 million** – for matters re breaching data protection principles, conditions for consent, data subjects' rights and international data transfers

Germany – Enforcement: Legal Framework

Regulatory Fine…

- A „*Leitungsperson*“ (e.g., a Manager) of a Business
- is committing a crime or an administrative offence and
- thereby violates obligations which are directed to the Business as such,
- or accrues funds to the Business.

§ 30 OWiG Verbands-geldbuße

… combined with failure of obligatory supervision

- A „Leitungsperson“ omits to perform obligatory supervision,
- and that leads to crimes/administrative offences in the Business,
- while the omitted measures of supervision would have significantly hindered or even excluded such crimes/offences.

§ 130 OWiG Verletzung der Aufsichtspflicht

What a regulator says… (UK ICO.)

GDPR compliance is focused on a fixed point in time – it's like the Y2K Millennium Bug

"I'm still picking up a lot of concern from organisations about preparing for the GDPR by May. Much of that is understandable – there's work required to get ready for the new legislation, and change often creates uncertainty. However some of the fear is rooted in scaremongering because of misconceptions or in a bid to sell 'off the shelf' GDPR solutions. I've even heard comparisons between the GDPR and the preparations for the Y2K Millennium Bug.

I want to reassure those that have GDPR preparations in train that there's no need for a Y2K level of fear"

Elizabeth Denham, UK Information Commissioner

That dam breach or that damn breach?

Our Expectation

- Data Breaches will lead to more litigation activities in the EU
- Burden of proof lies fully with the controller
- Data subject may claim immaterial damages, e.g. for mental distress

Speaker

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Jörg Bielefeld

Partner | Lawyer | Head of White Collar Crime and Compliance

BEITEN BURKHARDT | Munich & Frankfurt Offices

Phone: +49 89 35065 1393

E-mail: Joerg.Bielefeld@bblaw.com

Jörg Bielefeld is Partner at BEITEN BURKHARDT's Munich office. As the Head of the firm's white collar and compliance team, he advises and defends companies and individuals in the whole field of business crime, tax crime and administrative offences, criminal compliance and individual criminal defence.

Jörg has an in-depth experience in advising companies both in national and international contexts in cases of corporate internal investigations, corporate defence against proceedings of authorities of all kind, and complex Compliance matters. Jörg developed a particular focus on Anti Corruption issues in order to avoid company fines in the following sectors: Automotive, Banking, Healthcare and Pharma, IT and Telecommunications and the Aerospace industry.

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Axel v. Walter

Dr Axel von Walter, CIPP/E, CIPM

Partner | Lawyer | Licensed Specialist for Information Technology Law | Licensed Specialist for Copyright and Media Law

Phone: +49 89 35065 1321

E-mail: Axel.Walter@bblaw.com

Dr Axel von Walter is Partner at BEITEN BURKHARDT's Munich. Dr von Walter focuses on the comprehensive advice on data protection law, including compliance issues. In addition to operative advice, Axel von Walter specialises in litigation. He was admitted to the German Bar in 2004.
Dr von Walter is a lecturer for media and information law at the faculty of law at the University of Munich.

Dr Axel von Walter is an "extraordinary lawyer and advisor, solving problems in a hands-on manner", boasting broad experience and ' und "advising in an extremely competent way".
(Legal 500 Germany 2018 & Legal 500 EMEA 2018)

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About BEITEN BURKHARDT

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BEITEN BURKHARDT at a Glance

BEITEN BURKHARDT is an international corporate law firm.

Founded	1990 in Munich
Lawyers worldwide	287
in Germany	256
Lawyers international	31
Offices	Beijing, Berlin, Brussels, Dusseldorf, Frankfurt am Main, Hamburg, Moscow, Munich, St. Petersburg

JUVE AWARDS 2017 Germany Law Firm of the Year Energy Law

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The LEGAL 500 DEUTSCHLAND TOP TIER 2018

TOP KANZLEI 2017 ARBEITSRECHT BEITEN BURKHARDT Wirtschafts Woche In Kooperation mit: Handelsblatt Research Institute Ausgabe 7/2017

AuA Personal | Praxis | Recht Best of HR 2016 SIEGER Kategorie Anwälte im Arbeitsrecht

The LEGAL 500 DEUTSCHLAND FÜHRENDE KANZLEI 2017

The LEGAL 500 DEUTSCHLAND TOP TIER 2016

Ranked In CHAMBERS EUROPE 2015 Beiten Burkhardt

Ranked In CHAMBERS GLOBAL 2014 Foreign Experts

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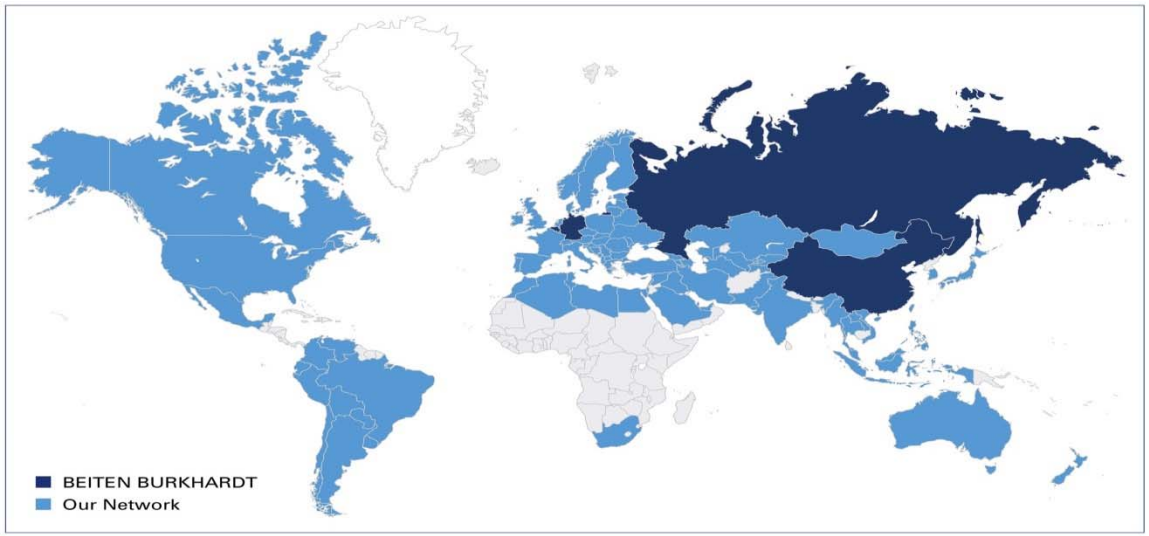
Our Global Network



BEITEN BURKHARDT

Our German and International Offices

BEITEN BURKHARDT

Our Offices

Beijing
BEITEN BURKHARDT
Suite 3130, 31st Floor
South Office Tower
Beijing Kerry Centre
1 Guang Hua Road
Chao Yang District
100020 Beijing
China
Phone: +86 10 85298110
Fax: +86 10 85298123
E-mail: bblaw-beijing@bblaw.com

Berlin
BEITEN BURKHARDT
Kurfuerstenstrasse 72 – 74
10787 Berlin
Germany
Phone: +49 30 26471-0
Fax: +49 30 26471-123
E-mail: bblaw-berlin@bblaw.com

Brussels
BEITEN BURKHARDT
Avenue Louise 489
1050 Brussels
Belgium
Phone: +32 2 6390000
Fax: +32 2 7322353
E-mail: bblaw-bruessel@bblaw.com

Dusseldorf
BEITEN BURKHARDT
Cecilienallee 7
40474 Dusseldorf
Germany
Phone: +49 211 518989-0
Fax: +49 211 518989-29
E-mail: bblaw-duesseldorf@bblaw.com

Frankfurt
BEITEN BURKHARDT
Mainzer Landstrasse 36
60325 Frankfurt am Main
Germany
Phone: +49 69 756095-0
Fax: +49 69 756095-512
E-mail: bblaw-frankfurt@bblaw.com

Hamburg
BEITEN BURKHARDT
Neuer Wall 72
20354 Hamburg
Germany
Phone: +49 40 688745-0
Fax: +49 40 688745-9
E-mail: bblaw-hamburg@bblaw.com

Moscow
BEITEN BURKHARDT
Turchaninov Per. 6/2
119034 Moscow
Russia
Phone: +7 495 2329635
Fax: +7 495 2329633
E-mail: bblaw-moskau@bblaw.com

Munich
BEITEN BURKHARDT
Ganghoferstrasse 33
80339 Munich
Germany
Phone: +49 89 35065-0
Fax: +49 89 35065-123
E-mail: bblaw-muenchen@bblaw.com

St. Petersburg
BEITEN BURKHARDT
Marata str. 47-49, lit. A, office 402
191002 St. Petersburg
Russia
Phone: +7 812 4496000
Fax: +7 812 4496001
E-mail: bblaw-stpetersburg@bblaw.com

WWW.BEITENBURKHARDT.COM

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