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CHSHCEE Newsletter

CHSHCEE Austria

Simplified formation of Austrian limited liability companies

On 1 January 2018 a new provision in the Austrian Limited Liability Companies Act (*Gesetz über Gesellschaften mit beschränkter Haftung*), which simplifies the procedure for the formation of limited liability companies, entered into force. However, its very limited scope of application and a number of unsettled questions led to doubts as to whether the new provision will effectively reduce the time and funds needed by founders.

Scope of application

The simplified formation procedure (*vereinfachte Gründung*) applies only if the same natural person is both the sole shareholder and the sole managing director. The share capital must amount to either EUR 35,000 or EUR 10,000 (in case of founding-privileged share capital). Other amounts or contributions in kind are not admissible. The Articles of Association need to include the name (*Firma*), registered office (*Sitz*), nature and purpose of the business (*Unternehmensgegenstand*), the total share capital and the share capital taken over by the sole shareholder. The Articles may also make provision for the foundation privilege (*Gründungsprivilegierung*), the reimbursement of founding costs and the possibility to take decisions regarding the distribution of profit. Other clauses are not permissible. As in the case of a sole shareholder acting as managing director the Articles need not be adapted to specific requirements (apart from the aforementioned matters) the limitation appear at first glance reasonable.

Differences in the founding procedure

In Austria, the Articles of Association of a limited liability company must be drawn up in the form of a notarial deed and the signatures on the application for registration in the commercial register need to be notarised. Both of these formal requirements do not apply in the case of the new simplified formation procedure. This is a great step forward in terms of facilitating access to limited liability companies as the costs and time involved is substantially reduced.

Certain services, usually offered by a notary public, are instead provided by banks: The bank identifies the shareholder and opens a bank account into which the share capital has to be deposited. Subsequently, the bank confirms to the commercial register that the share capital has been paid up and provides to the register the specimen signature of the managing director (also the sole shareholder) and a copy of the founder's ID card. Banks are entitled to

charge fees for the provision of these services; uncertainties exist, however, with respect to their liability. The Articles are submitted electronically by the founder via the *Unternehmensservice-portal* (a company service platform) and the application filed with the commercial register is also transmitted via this platform.

Consequences

Due to its limited scope, the new provision cannot be used by corporate groups and is of limited relevance to start-ups. Instead, it is aimed at one-man business enterprises which are enabled to set up a limited liability company to be established without there being any need to consult an attorney, a notary public or any other legal practitioner. One the one hand, this may help to simplify the process for establishing a limited liability company (although the normal procedure only takes a few days). On the other hand, a lack of legal guidance may also result in the founders receiving an increased number of correction requests (*Verbesserungs-aufträge*) from the commercial courts, especially due to names not in line with the legal requirements. What is more, most companies will require individual Articles of Association which go beyond the minimum provisions allowed for simplified formations. Only time will tell whether the controversial new procedure for simplified formations will nevertheless gain significant practical relevance.

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CHSHCEE Belarus

IT Revolution in Belarus

A new Decree issued by the President of the Republic of Belarus, No. 8 "On The Development of The Digital Economy" (the "**Decree**"), was adopted on 21 December 2017. The Decree will enter into force on 28 March 2018. It is expected to boost the development of the Belarusian IT sector. In particular, the Decree introduces new benefits for the residents of the High-Technology Park (the "HTP") and regulates cryptocurrencies in Belarus.

Cryptocurrencies

First and foremost, the Decree established the legal regime for tokens and cryptocurrencies in Belarus. Any company may now lawfully own tokens as well as create, transfer, and offer them to the public in Belarus and abroad via a resident of the HTP.

Moreover, tokens may also be owned and transferred by individuals; however, individuals may not offer tokens for sale to the public. All these provisions in fact legalize ICOs and other similar ways of fundraising by residents of the HTP both in Belarus and abroad.

Besides, the Decree has introduced a number of tax benefits regarding transactions in tokens, namely:

- any sale of tokens by any company is VAT-exempt;
- profits from the exchange of tokens into other tokens are exempt from corporate income tax;
- any transactions in tokens (including their creation, mining, public offering, selling and buying) by residents of the HTP are also exempt from corporate income tax;
- the mining, selling and buying of tokens by individuals are exempt from personal income tax.

The above-mentioned tax benefits will be in force until 1 January 2023.

Benefits for residents of the HTP

In addition to introducing a legal framework for tokens and cryptocurrencies, the Decree has also extended the term of the special legal regime for residents of the HTP until 1 January 2049. In particular, as before the residents of the HTP will enjoy the following benefits:

- exemption from corporate income tax on profits from selling own goods (works, services);
- exemption from VAT with respect to own goods (works, services);
- exemption from VAT and customs duties on the import of equipment required for resident's activity (scientific equipment, PCs, servers, etc.);

- exemption from offshore duty with respect to payments for marketing and advertisement services, as well as dividends paid to shareholders residing in offshore jurisdictions;
- exemption from real estate tax on buildings located within the territory of the HTP;
- exemption from land tax on land plots located within the territory of the HTP for the construction of buildings throughout the period of construction but no longer than three years;
- the personal income tax rate to be paid by the employees of HTP residents is 9% (compared to the general rate of 13%);
- decreased amount of social security contributions to be paid by a HTP resident for its employees – only part of a salary equivalent to the average monthly salary in Belarus (approx. EUR 350) is taken into consideration for the purpose of calculating social security contributions;
- the rate of withholding tax on dividends paid to foreign shareholders is 5%;
- no mandatory conversion of proceeds in a foreign currency into Belarusian rubles.

Moreover, the Decree has also provided additional benefits, namely:

- shareholders and managers of a resident of the HTP do not bear subsidiary liability in case of a resident's insolvency unless such insolvency was caused by illegal activity (i.e. full "corporate veil");
- residents of the HTP may freely open bank accounts with foreign banks and conduct other transactions in foreign currencies without obtaining prior approval from the National Bank of the Republic of Belarus;
- residents of the HTP will not be inspected by controlling authorities without such an inspection having been approved in advance by the Administration of the HTP;
- residents of the HTP may freely enter into transactions with foreign counterparts without processing bilateral primary accounting documents;
- shareholders' agreements with respect to a resident of the HTP may be governed by foreign law and disputes related to such agreements may be resolved by foreign courts or arbitral bodies (usually disputes related to shareholders' agreements fall within the exclusive jurisdiction of Belarusian courts);
- residents of the HTP may freely enter into the following contracts previously unknown to Belarusian corporate law: convertible loans, option agreements, indemnification

agreements, non-compete and non-solicitation agreements with employees. They may also issue irrevocable powers of attorney and enter into transactions by means of blockchain smart contracts.

To be entitled to these benefits a company must be registered as a resident of the HTP and fulfil the relevant obligations: (i) pay 1% of its gross revenue to the Administration of the HTP on a quarterly basis and (ii) conduct any activity permitted for HTP residents including but not limited to software development and publishing, data processing, scientific research, data protection, IT consulting, cyber-game activities, operations with cryptocurrencies, activities related to medical and biotechnologies, artificial intelligence, aerospace technologies, fintech technologies, self-driving cars, etc.

Simplified employment of foreign employees

The Decree has introduced simplified rules for the employment of foreigners by residents of the HTP. First and foremost, foreign employees and shareholders may freely enter and stay in Belarus for 180 days per year without a visa.

Second, residents of the HTP are no longer required to obtain a license for the employment of foreigners. The license was replaced by the requirement to notify the relevant migration department.

Summary

It is expected that the Decree will boost the further development of the IT sector in Belarus and provide the country with a great opportunity to become a leading IT hub in Eastern Europe. With this in mind, the Decree is welcomed by the business community as it will potentially attract new investments to the Belarusian economy.

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CHSHCEE Bulgaria

Transposition of the EU Damages Directive

Directive 2014/104/EU on Antitrust Damages Actions (**Damages Directive**) was transposed into Bulgarian law in January 2018. Like other Member States, Bulgaria has implemented the Damages Directive with a considerable delay, as the transposition was due by 27 December 2016. The Directive was transposed via amendments to the Bulgarian Protection of Competition Act (**PCA**) by introducing a new chapter "15. Liability for Damages" which implements the Damages Directive's rules on claims for damages, compensation, disclosure of evidence, effect of competition authorities' decisions, limitation periods, passing-on of overcharges, etc.

The Damages Directive aims to remove the main obstacles to compensation for victims of infringements of antitrust law, such as cartels or abuse of a dominant position. The directive sets out rules to ensure that anyone who has suffered damages caused by an infringement of competition law (e.g. higher prices or lost profits) can effectively exercise the right to claim full compensation for that harm from the infringer by bringing an antitrust damages action (private enforcement).

Below we outline certain details regarding the Damages Directive's national implementation.

Effect of competition authorities' decisions

An infringement of competition law found by a final decision of the Bulgarian competition authority (or a court resolution confirming such a decision) is deemed to be irrefutably established (fully proved) for the purposes of an action for damages brought before the civil courts. Where such a decision is taken in another Member State, it will constitute prima facie evidence of the competition law infringement. As the Bulgarian implementation rules do not grant the same evidential value to infringement decisions issued in other Member States, such decisions, if presented before a Bulgarian court, will be assessed along with all other evidence.

Disclosure of evidence

Detailed rules are provided to ensure that parties have easier access to evidence in proceedings relating to actions for damages. The civil courts are able, upon request of a claimant (based on a reasoned justification), to order the defendant or a third party to disclose relevant evidence. The same rights are granted to the defendants. To enforce the disclosure rules effectively, civil courts can impose penalties of up to BGN 500,000 (approx. EUR 255,000) on parties, third parties and their legal representatives in the event of: (i) a failure or refusal to

comply with the court disclosure order; (ii) the destruction of relevant evidence; (iii) a failure or refusal to comply with the obligations imposed by the court order protecting confidential information; or (iv) a breach of the limits on the use of evidence provided for in the PCA. In addition, the court may, taking into account the parties' behaviour, presume the relevant issue to be proven, as well as to order the payment of costs by the party in breach.

Limitation periods

The limitation period for bringing actions for damages under Bulgarian law is five years, which is the minimum period required under the Damages Directive. Limitation periods do not begin to run before the infringement of competition law has ceased and the claimant is aware of or can reasonably be expected to be aware of: (i) the behaviour and the fact that it constitutes a competition law infringement; (ii) the fact that the infringement caused harm to the claimant; and (iii) the identity of the infringer. The limitation period is interrupted if a competition authority initiates proceedings in respect of the competition law infringement to which the action for damages relates.

Quantification of harm

As victims of antitrust infringements usually find it difficult to prove the specific damages they have suffered, the Damages Directive requires Member States to ensure that neither the burden nor the standard of proof necessary for the quantification of harm suffered renders the exercise of the right to damages practically impossible or excessively difficult. In this regard, the PCA provides that where the claim is established in its grounds but there is insufficient evidence of its precise amount, the court is entitled to determine the amount at its own discretion or by taking an expert opinion.

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CHSHCEE Czech Republic

New Payment System Act in the Czech Republic

On 13 January 2018, the new Payment System Act (Act No. 370/2017 Coll.) came into effect, replacing Act No. 284/2009 Coll., on Payment Systems. With the adoption of the new Payment System Act, the Czech Republic transposed into law Directive (EU) 2015/2366 on payment services in the internal market of 25 November 2015 ("**Revised Payment Service Directive**" or "**PSD2**"). The purpose of the new payment directive is to respond to the technological progress made since the adoption of Directive 2007/64/EC of the European Parliament and of the Council ("**PSD1**") to facilitate and accelerate payments without compromising security and thus strengthening the internal market for payment services in the EU.

One of the main downsides of the old regulation was the possibility for national legislators to regulate some areas of payment services differently from the provisions of PSD1 by including various exemptions from the directive that were ambiguous and too general, which thus created barriers to innovation and the entry of new players into the market.

The new regulation of payment services at the EU level is mainly aiming to improve legal certainty by limiting exemptions from the application of PSD2, facilitating the introduction of innovations in the area of payment services, avoiding security risks and ensuring greater consumer protection. Below we briefly outline the main innovations introduced into Czech law by PSD2.

New payment service providers

The new Payment System Act introduces new entities authorized to provide payment services. Payment services can now also be provided by postal license holders if their licenses explicitly include authorization to provide postal money order delivery services.

A wholly new entity, defined as the account information service provider ("**AISP**"), will also be authorized to provide payment services. The authorization to provide payment account information services allows the AISP to access the accounts that clients have at different account providers. The AISP, as a different entity from the provider maintaining the payment account, will be entitled to share information related to the payment account via the Internet.

Authorization to operate this service may be granted by the Czech National Bank to banks, payment institutions, credit unions or electronic money institutions, in addition to being granted to a newly regulated AISP. This service is intended to improve the ability of account users to maintain an overview of their financial

situation by finding information on all of their accounts in "one place".

Major changes in the process of transfer of financial means

A new indirect payment order service has been introduced where, for example, a payment order is initiated at the request of the payment service user with respect to a payment account held at another payment service provider. This service enables a payment account owner to carry out a transfer of funds by entering a money transfer order by a third party (the payment initiation service provider, "**PISP**"), who then submits the order on behalf of the payment account owner to the payee who manages the payment account of the owner.

Furthermore, the blocking of funds in the context of a card-based payment transaction, which has not yet been legislatively solved, is explicitly regulated in PSD2 and in the new Payment System Act. It is newly established that in the context of a payment transaction to which the payer's payment order is sent and initiated by the payee and whose exact amount is not known beforehand, the payer's provider may block the funds on the payer's account only if the payer has given consent to the exact amount of the funds to be blocked. The payer's provider is required to release the amount corresponding to the blocked funds as soon as it becomes aware of the actual amount of the transaction, at the latest upon receipt of the payment order. The purpose of this adjustment is to avoid situations where the payer was not informed of the blocking of the funds on the payment card or has not given consent to it.

The Payment System Act also introduces a new obligation to make online payments subject to so-called "strong authentication". A combination of at least two authentication elements is required at the moment at which the payment transaction is entered: (i) information known only to the users of payment services (such as login password or similar data); and (ii) an item in the possession of the user of the payment service (typically a mobile phone); or (iii) biometric data (such as fingerprint, or scan of the eye). While so-called strong verification through a combination, for example, of login password and text message received via the user's mobile phone is already being used by most payment service providers, using new technologies based on biometric data should now also be offered to users.

Protection of customers

The new Payment System Act also increases the protection afforded to customers by decreasing the customer's liability for an unauthorized transaction from EUR 150 (approx. CZK 3,817) to EUR 50 (approx. CZK 1,272). This does not apply where customers act fraudulently or in cases of breach of duty as a result of gross negligence.

Some other changes introduced into Czech law by the new Payment System Act

PSD2 itself covers so-called "one leg" transactions, transactions in a currency other than the euro or a national currency of one of the member states. However, this does not really constitute any change as the previous act regulating payment systems from 2009 contained a wider geographic range and also covered transactions in foreign currencies.

For small-scale payment service providers and small-scale issuers of electronic money, the system for obtaining authorisation has changed from one based on registration to one where providers are required to apply for a license. For this reason, we expect an increase in the number of administrative proceedings for the granting of licenses. The authorization requirements are also extended. Small-scale payment service providers will no longer be entitled to provide payment initiation services or account information services.

Conclusion

New legislation regulating payment services may open the door to the market for new entities and allow existing providers of payment services to adapt to new conditions and use new technologies.

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CHSHCEE | Hungary

Stricter Rules for Court Procedures in Hungary

Hungarian lawyers are accustomed to the fact that come 1 January they will have to advise their clients on the basis of a bevy of new rules because this is the date when most legislative amendments take effect in Hungary. However, 2018 started with even more sweeping changes than usual, particularly with respect to regulatory and court proceedings.

Starting from 1 January 2018, new acts governing taxation procedures (Act CL of 2017 on the Rules of Taxation) and regulatory procedures (Act CL of 2016 on the General Rules of Public Administration Procedures) came into force. What is more, from 2018 legal recourse against a regulatory authority's decision can be sought before a special type of court known as a public administration court, rather than before the general courts.

The reform of the court system has also included a major overhaul of the rules applicable in civil proceedings, as Act CXXX of 2016 on Civil Proceedings also took effect on 1 January 2018.

Under the new rules, a claim of HUF 3 million (approx. EUR 10,000) or less no longer has to be filed directly with a court. Such small claims can be asserted in special proceedings conducted by notaries public, and such a case will only go to court if the proceedings conducted by the notary public are unsuccessful.

The new rules state that cases involving claims for amounts between HUF 3 million and HUF 30 million (approx. EUR 10,000 and EUR 100,000) are heard by local courts in simplified proceedings. On the other hand, the new legislation includes very strict rules for claims exceeding HUF 30 million.

In the case of a claim exceeding HUF 30 million, the proceedings are split into two phases: a fact-finding phase and a trial phase. The fact-finding phase is designed to allow the courts to determine the exact scope of the claims the parties seek to enforce. There are very strict deadlines in this phase, and both parties must also submit their declarations and pleadings to the court in writing. After the fact-finding phase is concluded, the parties have very limited opportunities to modify their original declarations. The purpose of the trial phase is to give the parties the opportunity to provide evidence in support of their declarations.

To ensure the rather strict rules are observed, the parties to a lawsuit where the claim exceeds HUF 30 million must retain a lawyer.

In an entirely new development, class action lawsuits can now be filed in Hungary. With the introduction of this type of litigation, which is borrowed from

common law legal systems, a large number of consumers can join forces to sue a company that has caused them loss or other injury. There is no established practice for these lawsuits in Hungary, and at the time of writing it is impossible to know how often people will take advantage of this new form of legal recourse. Nevertheless, companies in the banking, commercial, telecommunications and other service sectors would be well advised to prepare for this type of litigation.

In light of these sweeping changes and very strict rules, anyone intending to file a lawsuit or who is threatened by one should seek legal advice before engaging in a legal dispute in Hungary.

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Károly Zaicsek, CHSH Dezső's litigation expert and a guest university lecturer, has contributed to the drafting of several chapters in the new Act on Civil Proceedings.

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CHSHCEE Romania

GDPR-Update for Romania

The EU General Data Protection Regulation (**GDPR**) will become effective on 25 May 2018. As a regulation the GDPR will become directly applicable in all EU member states. As the GDPR will impact not only on entities in the European Economic Area, a Gap Assessment and Solution Implementation covering such entities is recommended.

The consequences of non-compliance with the GDPR include: (i) fines of up to EUR 20,000,000 or up to 4 % of total worldwide annual turnover of the preceding financial year, whichever is greater, (ii) significant costs associated with the remediation of personal data breaches, and (iii) damage to reputation.

The Romanian Data Protection Authority (DPA) has published on its official website a law project regarding the data protection regime in Romania (GDPR law project). The GDPR law project aims to amend and complete the law regarding the establishment, organization and functioning of the Romanian DPA, as well as to repeal the Romanian data protection law currently in force. The document was subject to public debate and currently the legislative procedure is still ongoing.

The GDPR law project provides, inter alia, that the attributions of the Romanian DPA are the ones provided by the GDPR and Directive (EU) 2016/680 of the European Parliament and the Counsel dated 27 April 2016.

The Romanian DPA may perform investigations and in this respect it may request any information and verify any equipment, take declarations from any person potentially supplying useful information and provide any necessary expertise in this respect. The Romanian DPA may have access to any of the premises of the operator and of the empowered person. Consequently, the Romanian DPA may apply coercive measures, sanctions in the event of contraventions, provide recommendations and notify other competent authorities. Based on specific criteria, the decisions of the Romanian DPA may be challenged before the Romanian Courts of Appeal.

It is important to note that the establishment and enforcement of the sanctions applied by the Romanian DPA is to be performed as per domestic law regarding the legal regime applicable for contraventions. It is clear that the prerogatives and powers of the Romanian DPA are considerable and, in the special literature on the subject, the Romanian DPA is even considered to be an authority comparable to the Romanian Competition Council.

The GDPR law project provides that as of 25 May 2018 Law No. 677/2001 on the

protection of individuals with regard to the processing of personal data and the free movement of such data is repealed. Any reference to this law is to be considered as being made to the GDPR.

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CHSHCEE Slovak Republic

The General Data Protection Regulation vs. Slovak Act on Protection of Personal Data

After considerable effort, discussion and preparations over the course of many years, the General Data Protection Regulation 2016/679 (**GDPR**) – a new data protection framework in the EU – was adopted on 24 May 2016. It becomes enforceable in the Member States from 25 May 2018 and in the meantime companies and businesses across Europe and beyond are preparing to ensure their compliance with its provisions because the current Directive will be repealed with effect from 25 May 2018 along with the local regulations governing this area of law.

A lot has already been said about the GDPR and those affected are currently faced with a lot of complex information. The GDPR focuses on reinforcing the rights of individuals, strengthening the EU internal market, ensuring a more stringent enforcement of rules, streamlining international transfers of personal data and establishing global data protection standards. These aims should be achieved by the main changes in the EU data protection legislation adopted by the GDPR.

Given that the new EU data protection legislation was adopted in the form of a regulation, as opposed to a directive, it will be **directly applicable** in all Member States without the need for implementing national legislation. The data protection standards will therefore be identical throughout the EU. However, the Slovak Republic decided to adopt the special Act on the Protection of Personal Data (**Slovak Act**) that comes into force on 25 May 2018 in order to transpose into national law the GDPR as well as Directive 2016/680 on the protection of natural persons with regard to the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

The Slovak Act establishes the **complex legal framework** for the protection of personal data that applies to processing operations that do not fall within the scope of European Union law. It is consistent with the legal framework established by the GDPR. This should eliminate the legal gap in the area of personal data protection that would otherwise arise when the current Slovak Act on Protection of Personal Data and the respective Decrees are repealed.

The first and second parts of the Slovak Act govern the specific rules for the processing of personal data applicable to data controllers and data processors in those cases not covered by the GDPR. The third part of the Slovak Act implements

the rules applicable to the processing of personal data by data controllers which are the **competent authorities** for processing personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

The fourth part of the Slovak Act represents the **implementation part**, which adds the specific rules for the processing of personal data set forth by the GDPR. Since the GDPR explicitly allows Member States to regulate specific operations with personal data locally, the Slovak Act within this part stipulates the conditions under which these operations may be carried out.

In particular, the Slovak Act regulates:

- the rules for processing personal data for academic purposes or in relation to art and literature, including the adequate guarantees;
- the rules for processing personal data for the purposes of informing the public by the media;
- the rules for processing personal data in relation to employment;
- the processing of the so-called birth number as the national identification number;
- the processing of genetic and biometric data and data related to health;
- the conditions for obtaining personal data relating to a natural person not directly from the data subject but from another natural person (it is possible only with the prior written consent of the data subject with some legal exceptions);
- the conditions for the processing of personal data of deceased persons (different regulation in comparison to GDPR, in such a case the relative could give consent for the processing of the personal data of the deceased person and if only one relative refuses such consent is not valid);
- the procedure for adopting the adequate security measures and impact assessment (this refers to international security standards).

The fifth part of the Slovak Act regulates the status of the supervisory authority (the Office for the Protection of Personal Data of the Slovak Republic), its competence, scope of activities and the composition. Moreover, it regulates the code of conducts, certificates, the procedure of the accreditation of the monitoring subject and certification subject, controlling procedure and penalties.

As can be seen from the content of the new regulation, the Slovak Act fully transposes into national law the GDPR without any change in some areas, which means the Slovak Act does not deviate from the GDPR, even if the GDPR allows such option. The aim of the legislator was

to extend the competence of the GDRP to activities which do not fall within the scope of the European Union, but only to the extent that the Slovak Act defines its material and territorial scope.

Finally, it should be added that the Slovak Act is a general legal regulation (*lex generalis*) in relation to other local legal regulations governing the protection of personal data, which represent the **specific legal regulation** (*lex specialis*). For example, the Slovak Labour Code contains provisions protecting the privacy and personal data of employees and at the same time represent one of the legal bases for the processing of personal data.

Generally speaking, the new GDPR constitutes a fundamental and important change in the EU data protection framework but its correct application by data controllers and processors must necessarily go hand in hand with the application of local laws reflecting the **particularities of the law of each Member State**.

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