

European personal data protection in the context of international digital trade

Abstract

Since the adoption of the Treaty of Lisbon, the EU Charter of Fundamental Rights, which recognizes the fundamental right to the protection of personal data, has become part of EU primary law. An unwritten part of the right to the protection of personal data is the right to continuous protection. At the same time, a legal basis for the adoption of secondary legal acts in the area of personal data protection was established. Currently, the detailed rules for the processing of personal data are set by the General Regulation on the Protection of Personal data generally known as GDPR, which in Chapter V. regulates the conditions and legal mechanisms for the transfer of data to third countries and international organizations. Compliance with the rules is monitored by supervisory authorities, which can levy a heavy fine for a violation of the rules. The transfer of personal data is of fundamental importance for the provision of some services, and the EU regulation represents a conditional restriction of cross-border data flows. Therefore, the thesis examines whether the EU regulation of cross-border transfers might conflict with the EU's obligations in the field of international trade, namely the obligations under the General Agreement on Trade in Services (GATS) adopted within the WTO. This agreement contains a most favoured nation clause and governs domestic regulation requirements. The EU has also committed to providing market access and has adopted a national treatment clause to the extent enshrined in the Schedule of Specific Commitments, which covers a lot of categories of services for which the transfer of personal data is necessary. The thesis further examines whether the potential conflict of EU regulation with GATS could be justified by a general exception provided by the agreement, and the issue of digital protectionism. Furthermore, the attention is focused on other international trade agreements being negotiated by the Union, for which the question of cross-border data transfer is relevant, the EU's attitude to solving this issue is described, and the proposed solution of how it would be possible to include the free data flow obligation into these agreements while respecting the primacy of fundamental rights over international trade. Finally, attention is paid to the phenomenon called the Brussels effect, and a new EU legislation, which applies to some digitally provided services, is mentioned.

Key words: GDPR, cross-border data transfer, international trade, GATS