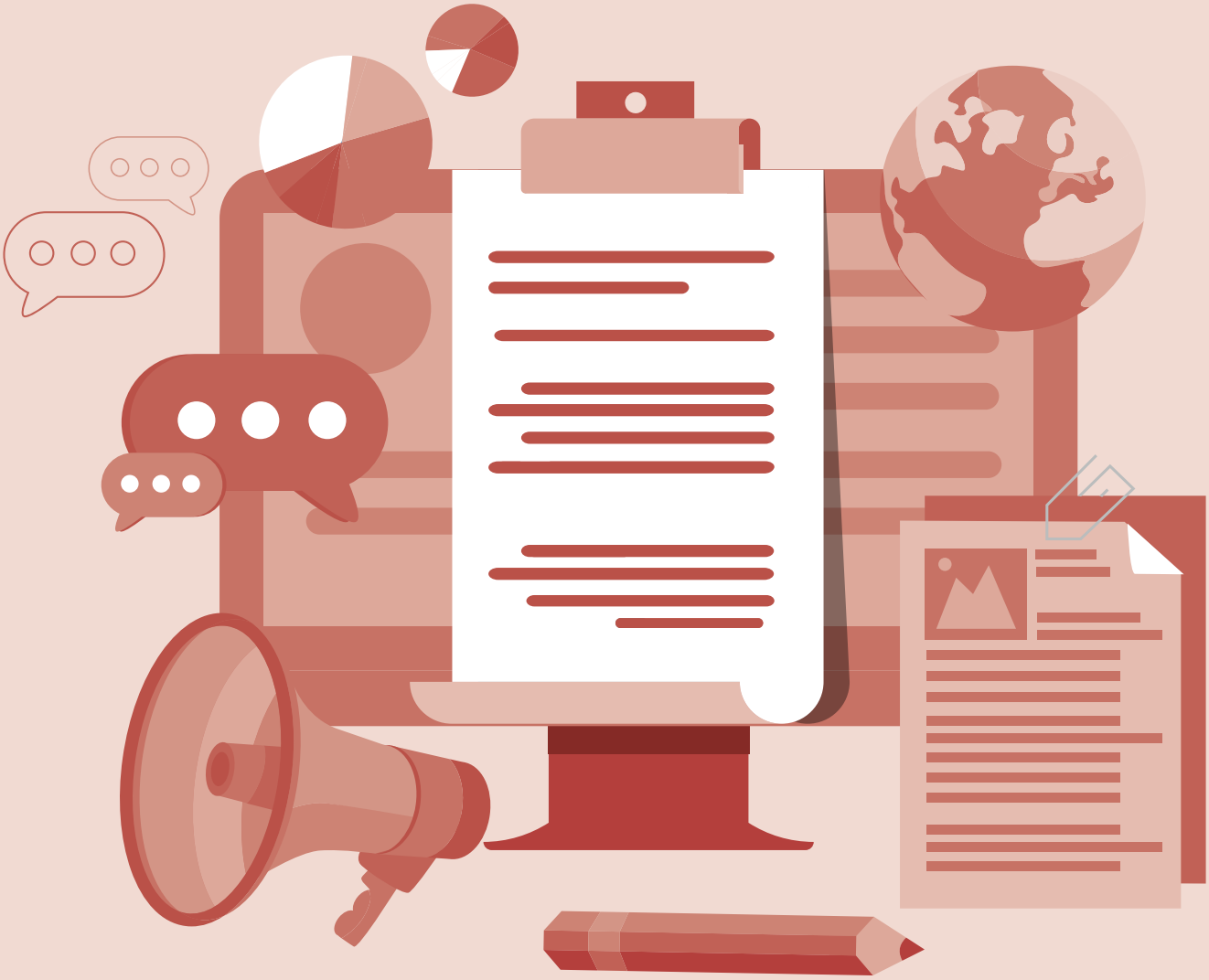
ispa
Internet Service Providers Austria

GENERAL DATA PROTECTION REGULATION



CODE OF CONDUCT FOR INTERNET SERVICE PROVIDERS

PREAMBLE

The General Data Protection Regulation (GDPR) was put into effect in Austria on 25 May 2018 and is directly applicable. Its target is to protect natural persons with regards to the processing of their personal data and to unify data protection standards in Europe.

The undersigned companies acknowledge their responsibility with regard to the fundamental right to data protection and expressly admit to their social responsibility within the scope of their business.

By elaborating a common understanding of the sector-specific implementation of the requirements and obligations of the GDPR, this Code of Conduct shall provide legal certainty to ISPs and transmit this understanding to their customers. Thereby due consideration is given to the relevant sector-specific legal frameworks that ISPs underlie, most prominently the provisions of the Austrian Telecommunications Act 2021.

The Internet Service Providers Association Austria (ISPA) representing the Austrian Internet industry has elaborated the following Code of Conduct in accordance with Article 40 GDPR and in cooperation with ISPA members and other leading stakeholders. Upon re-submission to the Data Protection Authority the Code of Conduct may be developed further in the future.

SCOPE OF APPLICATION

Providers of public communication services or networks who have notified their services to the competent regulatory authority in accordance with § 6 (1) TKG 2021 – (hereinafter referred to as “ISP”), can submit themselves to this Code of Conduct.

INDEX

I. INFRASTRUCTURE-RELATED SERVICE RELATIONS

1. In context of the performance of communication services to end users, the one operator who holds the contractual end user relationship regularly is the controller, the end user is the data subject. To enable end users to use communication services beyond the limits of the infrastructure of their contracting partner, it is necessary for operators to ensure by contractual and technical arrangements that the end users services may be seamlessly performed beyond network borders.

2. To guarantee such use, the cooperation of the operators is subjected to a sector-specific system of rules which on the European level provides a frame by various guidelines and regulations and which is implemented in national laws (e.g. the Austrian Telecommunications Act 2021). In addition to the obligations which apply to all operators (such as the obligation to interconnection), there are specific access obligations for market dominating operators.

3. According to the sector-specific European legal frame, the operators are also subject to a narrow legal regime regarding the design of their business models. This particularly includes the regulation of competition, frequencies, universal service and consumer protection as well as sector-specific data protection provisions.

4. Based on a sector-specific system of rules voluntary and obligatory access- and connection services ("ISP-services") have developed, which are being offered and demanded on the (wholesale-) market. In the end these rules ensure the functioning of the entire market, the exchange of information via the top of the network of a single operator and ensure that operators who do not have the necessary infrastructure, get access to external infrastructure, and are thereby enabled to offer their products and services to their end users.

5. In the context of performing ISP-services between operators, personal data of end users are being processed. The processing of these data is necessary in order to allow the classical business model of an operator, which is designed as follows:

6. Contracting partners in the provision of ISP-services are always two operators, who do not necessarily, but potentially have their own end user relationships. In this specific performance relationship, no contractual relations exist between the end user of an operator and the other operator involved. Every operator providing an ISP-service ("operator") processes personal data of the end user of the demander of the ISP-services ("demander") within his network in accordance with his own specific statutory obligations, data protection management systems and data security requirements. These data need to be processed to be able to provide the ISP-service.

7. In those cases where the ISP-services are exclusively based on the sector-specific legal framework, the means and purposes of the data process are determined solely by the respective regulation standards. The role of the controller in terms of Art. 4 subparagraph 7 GDPR is thus determined according to the criteria of the national regulation standards. Respective regulatory obligations exist particularly in § 160 ff TKG 2021(Austrian Telecommunications Act) as well as in the regulatory decisions of the Austrian Telecom Control Commission (TKK), which stipulate and even command in detail the processing of personal data of end users within the scope of ISP-services.

8. In terms of the relation of the operators vis-à-vis each other, no reciprocal decisional authority exists regarding data processing. At the same time the demander basically has no option to choose the operator but is bound to that one operator who offers the ISP-services necessary for the provision of end user services and who owns the necessary infrastructure. Thus, no processing relationship in terms of Art 28 GDPR is being established between the demander and the operator. No processing of data beyond the purpose of the ISP-service is done by the performer of the ISP-service in its own interest. Means and purposes of the data processing are rather exclusively defined by the national and European regulatory standards.

   Controller of the data processing within the scope of the performance of end user services shall therefore remain the operator who holds the end user contractual relationship. The performer of the ISP-services on the other hand shall be solely responsible for compliance with statutory data protection- and data security provisions and shall explicitly not be subjected to any decisional authorities (such as data-security measures).

It shall equally be stated that no joint controllership according to Art 26 GDPR exists between the operators, as purposes and means are not jointly determined. As described above, personal data are processed by each operator subject to its own determined purposes with the means determined by each operator and by common standards.

9. In terms of the relationship vis-à-vis the end user the attribution of data protection roles results from the factual situation. The operator who holds the contractual end user relation will regularly be the controller, the end user will be the data subject. The same applies to the relation vis-à-vis business customers who themselves act as controllers with respect to their own data applications. When offering traditional communication services (e.g. internet access, telephony service) the operator shall not be subject to any decisional authority of the end user, but exclusively processes personal data on the basis of statutory and regulatory standards in order to be able to perform the service. Therefore, no processing relation in terms of Art 28 GDPR is being established.

   No joint controllership according to Art 26 GDPR exists either in this case between the operator and the end user. The operator solely determines all purposes and means of the data processing.

   In exceptional cases the offer of special- or additional services may however create a processing relation. This shall however be examined individually on a case-by-case basis, whereby a possible contractual decisional authority regarding data processing shall be specifically considered.

   The following services do not represent such special- or additional services, which is why no processing relationship in the sense of Art. 28 GDPR or joint controllership according to Art. 26 GDPR is established. With these services, the purpose of the data processing is in fact determined exclusively by the ISP and derives from the fulfilment of legal obligations. The essential means of data processing are also determined by the ISP within the framework of the legal and regulatory requirements.

- **Maintaining an internet access service despite termination of contract in case the switching between providers is delayed (§ 118 TKG 2021):** ISPs that provide an internet access service are obliged to maintain their services even after the end of the contract where a switch between providers has not yet been completed. Until then, the ISP processes the relevant personal data to fulfil their legal obligations in accordance with Art. 6 para. 1 lit. c GDPR and despite the omission of the contractual basis, the ISP remains the controller, whereas the end user remains the data subject.

- **Information about the best tariff (§ 135 (7) TKG 2021):** Before an automatic extension of a fixed-term contract, the ISP must provide end users with information about the „best tariff“ determined based on their usage behaviour in the previous year. In order to determine the usage behaviour and to evaluate which tariff best corresponds to a costumer’s usage behaviour, the ISP has to process personal data of the end users concerned. If the data is processed automatically, it is considered „profiling“ within the meaning of Art. 4 para. 4 DSGVO. The legal basis for this is the fulfilment of a legal obligation within the meaning of Art. 6 Para. 1 lit c DSGVO, namely according to § 135 (7) TKG 2021.

  The ISP decides independently which personal data it processes in order to fulfil their obligation. However, they do not collect any additional personal data, but only use the basic subscriber and traffic data that the ISP already processes for other purposes. This can be especially billing data, such as information about used units or roaming. If the information obtained about usage behaviour is to be processed for another purpose, the ISP can no longer refer to the fulfilment of a legal obligation within the meaning of Article 6 (1) (c) GDPR, but rather examines the admissibility of further processing based on the criteria in Art. 6 para. 4 GDPR.

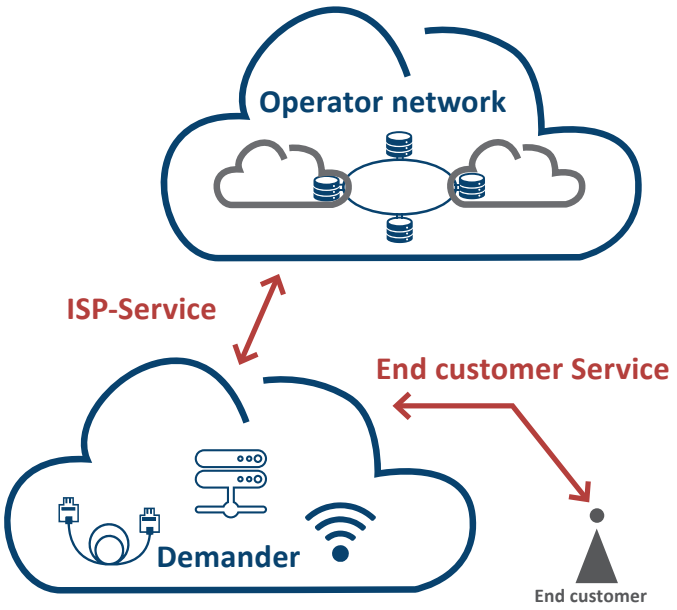
  The data retention periods remain unaffected. Therefore, when the personal data is no longer needed to fulfil the purpose for which it was originally collected (e.g. for billing), it will be deleted and no longer retained to determine the „best rate“.

- **Forwarding E-Mails to the customer after termination of contract (§ 144 TKG 2021):** Upon termination of a contract for an internet access service that also includes one or more e-mail address(es), an end user can request that in the following twelve months e-mails, which are sent to their previous e-mail address must be forwarded free of charge to their new e-mail address. Although the processing of personal data required for this is triggered by the end user’s declaration of intent, it is carried out exclusively to fulfil the legal obligation within the meaning of Art. 6 para. 1 lit c GDPR, namely that pursuant to § 144 TKG 2021

10. In addition to those service relationships where the means and purposes of a data processing are exclusively determined by national and European law, further access- and connection services exist, which are carried out according to the same principles as stated in section 6. These are essential services without which it would not be possible for the operator to provide services to the end user.

    In these cases, the ISP has no power of decision in terms of the contracting partner, and there are only very limited choices of contracting partner available. No processing of personal data beyond the purpose of performing the ISP service takes place by the ISP in its own interest.

    Also in these cases the operator holding the end user relationship shall be considered controller vis-à-vis the end user. The performer of the ISP-service in turn shall be solely responsible for compliance with the statutory data protection- and data security provisions.



(Pic. 1 Display of the ISP-business model)

11. The demander shall be solely responsible for granting the rights of the data subjects in the scope of his own end user contractual relationship. In doing so, the undersigned operators ensure that the data subjects have one specific point of contact for the protection and enforcement of their rights vis-à-vis their direct contracting partner. Furthermore, only the demander as the direct contractual partner of the data subject is able to perform a sufficient identification of the data subject in terms of Art 11 paragraph 2 GDPR, ensuring that the end user exercises his rights exclusively with respect to their own personal data.

Exemplary enumeration and description of ISP-services

- **Interconnection** is according to § 4 Z 24 TKG 2021 the physical and logical connection of public communication networks used by the same or by another operator to facilitate the communication between users of one company with users of the same or another company or to allow access to the services offered by another company. Services may be performed by the operators involved or by other operators, who have access to the network. Interconnection is a special case of access and is established between the operators of public networks.

  According to § 105 TKG 2021every operator of a public communication network is obliged to enable interconnection to other operators upon their request. The scope of interconnection is regulated in the (interconnection) agreements concluded between the ISPs. To this extent, in addition to the master data of the contractual partner also the necessary traffic data are processed (e.g. operating data of the respective connection or routing data in case of package-oriented services to the interconnecting operator; delivery-/connection data; billing data).

  In order to facilitate the transfer of phone numbers (porting), master- and billing data isprocessed in accordance with the provisions of the Communication Parameter-, Fee-, and value-added Services Regulation 2009 (KEM-V 2009) as well as in accordance with the Number Porting Regulation 2022 (NÜV 2022).

- **IP-Peering** is a connection service on the basis of an agreement (“peering agreement”) with which two ISPs connect their communication networks for the purpose of data exchange, but without charging any fees to each other. Hereby the end users of one ISP shall be provided with access to the services of the other ISP. In the same way as with interconnection, the master data of the contracting partner as well as the necessary traffic data (routing data) are being transferred to the connected operator.

- **IP-Transit** refers to a service whereby the data traffic is being conducted through the own network against costs. The contracting partners are usually of a different size with the bigger operator providing the smaller operator a so-called “uplink” for a certain fee. Billing is made on the basis of the conducted data quantity. For this purpose, the master data of the contracting partners as well as the routing and billing data are being processed.

- **National Roaming** means that the mobile phone of the end user nationally uses another network than the one of the operator with whom the data subject has concluded a contract for mobile phone services.

  In order to be able to perform the service, no data which enable a direct identification of the data subject is processed t, but only the MSISDN (Mobile Subscriber Integrated Services Digital Network Number).

- **Leased lines** are facilities providing a transparent transfer capacity between the network terminations, but with no interposition functions, which the user may himself steer as a component of the leased line offer (on-demand switching).

Leased lines particularly include

- the provision of lines with traditional interfaces (services without interposition function providing transparent transfer capacity between network terminations (symmetrically bi-directional)

- Ethernet services (services providing a guaranteed bandwidth between two network terminations)

- Blank glass fibre (= a pair of glass fibres which is being leased blank)

Summarized, leased lines are a physical connection between two points. Thus, for the performance of the services the processing of location-specific information (location data) as well as of billing data is necessary.

- **Unbundling** refers to an access service in the context of which line segments of a company's fixed communications network, which lead from the switch to the end-user are made available to other operators either physically or virtually for a fee.

  Unbundling can either be ordered by the regulatory authority as an access obligation and made available as a standard offer, or it can be offered to one or more companies as part of a commercial agreement.

  There are two separate contractual relationships: one between the operator carrying the access obligation and the access seeker and one between the access seeker and its end user. For the performance of the contractual relationship between the operator and the access seeker (e.g. creation, interference suppression) according to the respective standard offer, the processing of the access seeker's master data, the processing of the end user contact information and the location-related data of the end user is necessary.

- **Mobile Virtual Network Operators (MVNOs)** are mobile operators who do not possess their own infrastructure, but who may however offer communication services on the basis of a cooperation agreement with a mobile operator via their infrastructure.

Mobile operators with extensive market power may be imposed respective access obligations by the regulatory authority according to § 95 TKG 2021. The provision of services of the MVNO within the network of the obligated operator is performed with the help of the MSISDN, the Mobile Subscriber Integrated Services Digital Network Number. Additionally, the operator also receives location data of the end user of the MVNO. Data which would allow a direct identification of the data subject are not transmitted.

II. RIGHT TO INFORMATION

1. For the purpose of a transparent data processing, the undersigned ISPs will provide their customers with insights into the concerned data processing procedures. However, due to sector specific regulations they are subjected to certain restrictions.

2. The provision and transmission of traffic data is done exclusively under the special conditions of the material law. Traffic data may thus according to § 167 TKG 2021 not be stored or transferred by the ISP, except in the cases stipulated in this provision. The right to information on stored traffic data shall therefore be fulfilled only and exclusively by the transfer of the itemized call-list (EGN) according to §138 TKG 2021 to the customer[1].

3. The undersigned companies may under reference to Art 15 paragraph 1 subparagraph c) provide informa-

1 see DSB 15.4.2016, DSB-D122.418/0002-DSB/2016

tion to recipients or categories of recipients of personal data. The latter may be particularly necessary if it concerns recipients who are doing business in the technical performance of a communication service. Severe security concerns may exist regarding a provision of information on the entirety of individual recipients – particularly in the stated area. The reason is that respective information would easily enable criminals to identify potential weak points in order to get access to the network. This may affect, or even endanger the integrity of the system which the operator is obliged to warrant according to § 44 TKG 2021

4. Not included however is any information on data transfers to authorities within the scope of their supervisory task as well as to law enforcement agencies, to whom personal data must be disclosed for example in the context of legal interception.

5. If the data subject places his/her request for information electronically, the ISP will upon such request equally provide the information in an electronic format. The undersigned companies thereby take appropriate data security measures to guarantee a secure transfer of the data to the data subject. The provision of the information in paper is done via registered letter.

In order to guarantee that the entitled data subject receives the requested data, the undersigned companies carry out identity checks.

III. RIGHT TO RESTRICTION OF PROCESSING

1. The right to restriction of processing of personal data shall principally serve a preliminary balance between the interest of the data subject in their personal data and the interest of the controller for the processing of such data. The data subject can amongst others request the controller not to further process their personal data for the time being and thus not to delete it either where they are required by the data subject for the establishment, exercise or defence of legal claims.

2. Insofar as the data subject in the execution of this right requires the ISP to not further process, or delete, traffic data, this right is limited by § 167 TKG 2021 applying to operators as a lex specialis. Traffic data may thus only be processed in the cases stipulated in the TKG 2021. Upon termination of the connection as well as payment of the invoice, the operator must erase or anonymize the traffic data. Due to this obligation the undersigned ISPs are by law not allowed to store traffic data based on the execution of the right to restriction of the processing for a period beyond such date.

3. According to § 138 TKG 2021 as well as to the jurisprudence of the data protection authority[2] , traffic data are provided to the customer exclusively in the form of an abbreviated itemized call-list, except if the user has declared in writing that they have informed all existing co-users of the line, or will inform future co-users, that they receive an unabbreviated itemized call-list. Any further going storage of passive user numbers or other information for the identification of the recipient of a message for the purpose of the enforcement, execution or defence of legal claims may therefore not be requested by the data subject.

4. According to § 168 TKG 2021, ISPs are not allowed to store content data except in the cases regulated in TKG 2021 and provided that their storage does not represent an essential part of the communication service. A processing restriction is therefore not possible since none of the alternative circumstances mentioned in Art. 18 para. 1 DSGVO are fulfilled.

5. In order to guarantee that the requesting person and the data subject are actually the same, the undersigned ISPs carry out identity checks.

Special case: Restriction of data in backups instead of right to erasure

6. The right to erasure in Art 17 GDPR basically serves the data subjects to get personal data erased immediately

2 DSB 15.4.2016, DSB-D122.418/0002-DSB/2016

upon request and obliges the controller to immediately erase personal data if a contractual or statutory obligation or authorization for the processing is no longer given.

7. Erasures from backup- or archive storage however constitute challenges for the ISPs, as these are entirely automated processes and manual interventions into the deletion cycle are mostly only possible with high economic and technical efforts, which is why an immediate erasure is not possible.

8. In order to safeguard the interests of those affected, the processing of personal data covered by the right to erasure is restricted within the backup or archive storage in accordance with § 4 (2) DSG, until the documented backup or archive cycle leads to final erasure. This means that the personal data concerned are being eliminated from the primary processing systems and may no longer be processed there.

IV. RIGHT TO DATA PORTABILITY

1. The undersigned companies understand the right to data portability exclusively in relation to personal data which have been obtained directly from the data subject on the basis of an existing contractual relationship or on the basis of a rightful consent and insofar as the processing is done with the help of automated processes.

2. The target is to facilitate to the customers the frictionless entrainment of their personal data. The undersigned companies thus offer to the data subject the personal data made available by him-/herself within the scope of the use of an ISP-service.

3. The undersigned companies comply with the right for data portability by the provision of the following personal data, such as in particular:

a) Basic subscriber information according to § 160 Abs. 3 Z 5 TKG 2021[3], provided by the data subject during the registration or the upright contractual relationship:

   1) Name (surname and first name),
   2) Academic degree,
   3) Address (physical address)
   4) User number and other contact details for the message
   5) Date of birth

Data on creditworthiness, information on type and content of the contractual relationship as well as profiling data are not included in the claim for data portability, because these are not obtained from the data subject and the interpretation of the credit assessment must be left to each controller, in order to guarantee a fair competition.

b) Other data made available by the data subject, such as in particular:

   1) E-Mail- address disclosed by the data subject
   2) Content of the E-mail-inbox (if the operator is also the E-mail-service operator of the inbox)
   3) Bank details

4. In terms of due process, it is however excluded from the right to data portability that traffic data[4] or unabbreviated itemized call-lists (EGN) are transmitted, as these are not obtained directly from the data subject and data protection rights of third parties would be directly affected. Furthermore, according to §167 TKG 2021 traffic data may not be stored or transmitted by the ISP except in the cases expressly stipulated there.

   The transfer of stored traffic data to customers is thus permitted exclusively within the scope of the itemized call-list (§ 138 TKG 2021). According to the jurisprudence of the data protection authority no further going traffic data are being disclosed to the customer and therefore neither ported[5].

3 "Subscriber data" all personal data which are required for the establishment, the performance, modification or termination of legal relationships between the user and the provider or for the creation and publication of user directories, these are: Name (surname and first name with natural persons, name resp. designation with legal entities), (b) academic degree with natural persons, (c) address (physical address with natural persons, seat resp. invoicing address with legal entities), (d) user number and other contact information for the message, (e) information on type and content of the contractual relationship, (f) creditworthiness;

4 This includes location data as well.

5 DSB 15.4.2016, DSB-D122.418/0002-DSB/2016.

Provision of data to the data subject

5. The undersigned companies provide the personal data to a data subject, which they have directly provided based on rightful consent or within the scope of a contractual relationship, in electronic form (e.g. as download or transmission via E-Mail).

6. In order to facilitate the provision via download, the data subject is either transmitted a download link or a download button is installed in the customer area on the company website.

7. Data which may be obtained by the data subject themselves at any time in a current machine-readable format, shall be deemed made available.

8. The undersigned companies refrain from any kind of technical measures which would impede a later transfer of data obtained from the data subject to a new controller.

File format

9. Master data of the data subject in terms of item 3 a) 1 - 5 as well as E-Mail-address and bank details are being collected by the undersigned companies and provided as a text file in a common format, for example in XML, CSV or XLS format.

10. The content of the E-Mail-inbox is provided in a common format such as for example the MBOX- file-format or by retrieval possibility via IMAP, POP or ActiveSync.

11. It is at the discretion of the operator whether to port individual data, data categories or all data collected in one file (e.g. ZIP-file) as an archive.

    Provision of the data to a new controller

12. If the data subject so wishes, the undersigned companies - unless stated otherwise - provide the registered data to the new controller in the same way and manner as to the data subject.

13. In order to ensure the implementation of the provided data by a new controller, common technical standards are required within the ISP-industry on the European level. Until then the further usability of the data by the new controller may possibly not be guaranteed.

V. PROOF OF IDENTITY

In order to guarantee that the entitled data subjects exercise their rights as data subjects according to the GDPR, the undersigned companies may carry out identity checks. If the ISP has justified doubts about the identity of a data subject, it can request additional information in accordance with Article 12 (6) GDPR that is necessary for its confirmation.

VI. DATA-BREACH-NOTIFICATION

1. In case of a personal data breach, the undersigned companies will immediately, at the latest however within 24h[6], deliver a notification to the Data Protection Authority (Data-Breach-Notification).

2. The undersigned ISPs meet the formal and substantive requirements, which are specified in detail in the sample form (Annex A), when they notify the national data protection authority.

6 For as long as the special norm of Art 4 E-Privacy-Directive, which in Austria has been implemented by section 95a TKG as well as the regulation (EU) 611/2013 are in force, the ISPs bound thereby shall continue to carry out the Data Breach Notification by the criteria contained therein.

3. If the ISP omits a notification, it shall state the reasons therefore within the scope of his duty to documentation.

Notification of the data subject

4. Insofar as the violation of the protection of personal data likely leads to a material or immaterial damage for the data subject, the ISP in addition to item 1 transmits a notification to the data subject (Annex B). The higher the potential damage, the lower the necessary probability of occurrence to induce a notification.

5. Due to the fact that the ISP can only contact their own contracting customer, but not any other possible conversation partners, who may equally be affected by the Data-Breach, it is only possible for the undersigned ISPs to transmit a Data-Breach-Notification to the respective contractual customer. Insofar as a high number of non-contractual customers is affected by the Data-Breach, the ISP will inform these of the Data-Breach via a public notice.

Evaluation criteria

6. The undersigned ISPs evaluate the imminent severity of damage as well as the probability of its occurrence on a case by case basis by means of the type of the security event, the categories of the affected data as well as by means of the resulting possibilities of misuse by third parties.

7. It is particularly taken into consideration whether one of the following scenarios is imminent:

   a. loss of control over the data,
   b. discrimination,
   c. identity theft or - fraud,
   d. financial losses,
   e. unauthorized clearing of the pseudonymization,
   f. harm to someone's reputation
   g. loss of confidentiality of data subject to professional secrecy

8. The probability of damage occurrence may be appropriately lowered by technical and organizational measures which the ISP has taken or will take in relation to the affected personal data.

9. A high risk for material and immaterial damages for the data subject is being assumed by the undersigned companies particularly if unabbreviated credit card numbers, passwords or communication content are affected.

VII. PARTICIPATION IN THE CODE OF CONDUCT

1. Internet Service Providers who fall under the territorial and material scope of application of this code of conduct, may subject themselves to them and shall announce it via E-Mail to aufsichtsbeirat_coc@ispa.at or by mail to Währinger Strasse 3/18, 1090 Vienna.

2. If the prerequisites according to item 1 are not given, the concerned applicant shall not be included in the list of undersigned companies.

3. A current list of all companies who have subjected to the Code of Conduct for ISPs shall be published on the ISPA website. This list shall include the name and address of the undersigned company.

4. The undersigned companies shall put a link on their websites to the current list of undersigned companies.

VIII. MONITORING OF THE CODE OF CONDUCT

1. A supervisory board is set up as an organizational unit within ISPA and serves as the body responsible for monitoring compliance with this Code of Conduct in accordance with Article 41 GDPR.

2. Each signee of this Code of Conduct recognizes the recommendations and decisions of this supervisory board.

3. The exact criteria for appointing the members of the supervisory board as well as its concrete competencies are set out in separate by-laws. These can be found at www.ispa.at/coc.

ANNEX A

Sample Form for a Data-Breach-Notification to the Data Protection Authority on a violation of the protection of personal data

(Any information should as far as possible be already included in the first notification to the authority, which shall be made without delay, no later than 24 hours as of the detection of the event)

Remark: the present form corresponds to ANNEX I of the (EU) Regulation Nr. 611/2013 of the Commission dated 24 June 2013 on the measures for a notification on violations of the protection of personal data according to the directive 2002/58/EG of the European Parliament and the Council (Data Protection Regulation for electronic communication) as well as to the requirements of § 164 (1) TKG 2021. This form also considers the minimum requirements of content for a notification according to Art 33 Regulation (EU) 2016/679 (General Data Protection Regulation).

Information regarding the operator

1. Name and contact details of one or several contact persons for possible enquiries

Name: _____ Position: _____

Telephone number: _____ E-Mail-Address: _____

2. Statement whether it is a first notification or a subsequent notification

□ First notification □ Second or subsequent notification

3. Date and time of the event (if known, may be estimated if necessary) and of the determination of the event

Date and time of the event: _____ Date and time of the determination of the event: _____

4. Type of violation of the protection of personal data
Destruction, loss, damaging, unauthorized disclosure

□ Destruction: The data are no longer available/have been deleted
□ Loss: The data still exist, but the controller has lost control/access/possession
□ Damaging: The data have been modified, damaged or are no longer complete
□ Unauthorized disclosure: Transfer of data to recipients who are not entitled to receive the data (or to access them)

5. Type and content of the concerned personal data sets

Description of the concerned data categories and the approximate number of concerned personal data sets (particularly whether special personal data are concerned, data on criminal convictions, biometric data or health data)

_____

_____

6. Categories and number of data subjects

Indication of the potentially concerned groups summarized according to typecast indications (“employees”, “customers”, ...)

If an indication of the number is not possible, a justification why an estimation of the number of concerned users or persons is not possible at the time of the notification.

7. Technical and organizational measures which the operator has taken with regard to the concerned personal data (or which he is going to take)

e.g. resetting of passwords, access blocking, reporting to the competent police office in case of criminal actions

8. Possible consequences and possible detrimental effects on participants or data subjects

Information on the potential material or immaterial damages, such as loss of control over the personal data, discrimination, identity theft or - fraud, financial losses, unauthorized clearing of the pseudonymization, damaging of someone’s reputation or the loss of confidentiality of data which are subject to professional secrecy

ANNEX B

Sample Form for a Data-Breach-Notification to the data subject affected by the violation of the protection of personal data

(The information has to be provided in clear and plain language)

Remark: the present form corresponds to the minimum content requirements for a notification according to Art 34 of the regulation (EU) 2016/679 (General Data Protection Regulation).

Exclusions from the notification obligation (if the ISP omits a notification, he shall state the reasons within the scope of his documentation duty).

1.) Existence of technical and organizational security measures which are appropriate to make personal data inaccessible to unauthorized persons (encryption, pseudonymization)
2.) Measures taken subsequent to the data protection violation which eliminate the originally high risk of a damage
3.) The notification would constitute an inappropriate effort (in such case only a public notice shall be made)

Information regarding the operator

1. Name and contact details of one or several contact persons for possible questions

Name: _____ Position: _____
Telephone number: _____ E-Mail-Address: _____

2. Date and time of the event (if known, may be estimated if necessary) and of the determination of the event

Date and time of the event: _____ Date and time of the determination of the event: _____

3. Description of the type of violation of the protection of personal data

Destruction, loss, modification, unauthorized disclosure

□ Destruction: The data are no longer available/have been deleted
□ Loss: The data still exist, but the controller has lost control/access/possession
□ Damaging: The data have been modified, damaged or are no longer complete
□ Unauthorized disclosure: Transfer of data to recipients who are not entitled to receive the data (or to access them)

4. Technical and organizational measures which the operator has taken with regard to the concerned personal data (or which he is going to take)

Technical and organizational measures in order to eliminate the occurred violation as well as to minimize the detrimental effects if appropriate. E.g. resetting of passwords, access blocking, recording with the competent police office in case of criminal actions

5. Possible consequences and possible detrimental effects for the data subject

Information on the potential material or immaterial damages, such as loss of control over the personal data, discrimination, identity theft or - fraud, financial losses, unauthorized clearing of the pseudonymization, damaging of someone's reputation or the loss of confidentiality of data which are subject to professional secrecy

Währingerstrasse 3/18, 1090 Wien, Austria | +43 1 409 55 76 | office@ispa.at | www.ispa.at

Version 1.2., 31.08.2022