

Roundtable 16 - Cloud computing and data protection (Berlin, March 2023)

moderated by Raphaël Dana (Dana Law, Paris), Roland Marko (Wolf Theiss, Vienna) and Astrid Wagner (Arendt & Medernach SA, Luxembourg)

Discussion scenario:

You're the counsel to an American investment fund who has spotted a potential acquisition target in the healthcare sector.

The target is a public EU-based healthcare center which uses Microsoft 365, Google Docs and AWS to store patient data and other personal data (eg. employees).

Also, your client has already started developing an app that is going to connect patients and doctors to simplify their communication and they wish to roll out as soon as the acquisition is finalised. Post-acquisition, all data will be centralised and stored on your client's US servers.

- Do you see any show-stoppers?
- How do you approach the due diligence phase?
- Do you worry about technical measures/cybersecurity? How? When?

Roundtable 16 - Cloud computing and data protection (Berlin, March 2023)

moderated by Raphaël Dana (Dana Law, Paris), Roland Marko (Wolf Theiss, Vienna) and Astrid Wagner (Arendt & Medernach SA, Luxembourg)

Potential discussion topics:

- Cloud computing: public, private, hybrid or multicloud, cloud storage environments, SaaS applications etc.
- DPA with cloud service provider
- Categorization of data
- Special categories of personal data (health data)-
- Potential additional protection - Professional secrecy (medical or banking secrecy)
- Validity of consent
- Localization of data
- Transfers to the US
 - Opinion on draft adequacy decision
 - Data transfer impact assessment
- Data storage on Microsoft 365, Google Docs, AWS
- Backups
- M&A process
 - Set-up of virtual data room
 - Due diligence on privacy aspects
 - Due diligence review with tools such as Luminece Diligence
- Cybersecurity – recently numerous data breaches in the health sector, risk of fines and civil liabilities
- Technical & organizational measures
- ISO certifications
- In transit and at-rest encryption
- EDPB’s recommendations for use of the cloud services by the public sector
- Implementation of retention effectively in the cloud, including back-ups
- Data portability for the controller
- Others?