

The adoption of the new GDPR in Germany

Accis Annual Conference 2018
Serena Holm



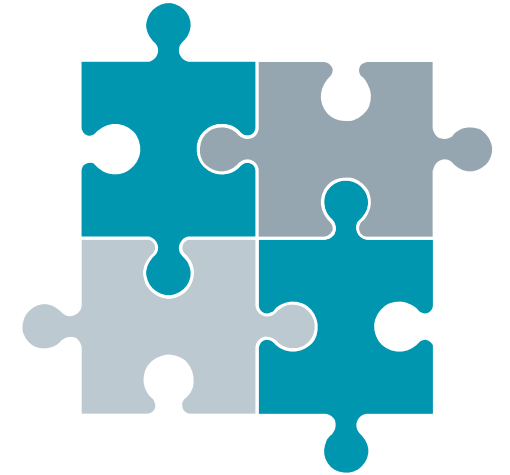
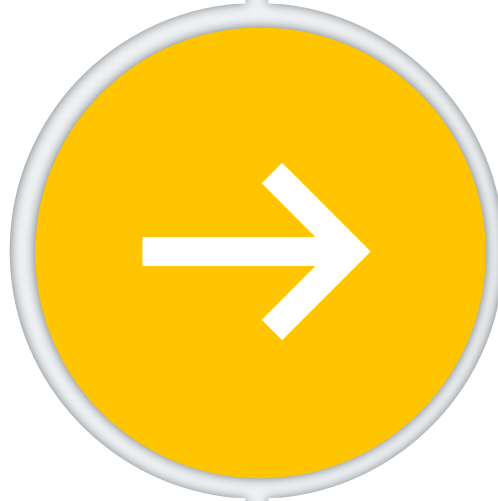
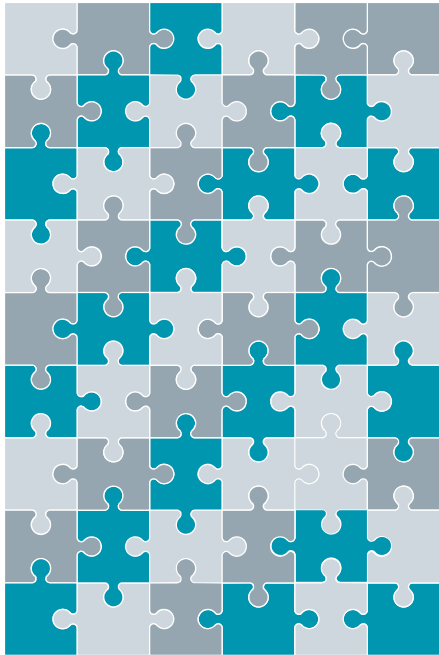
creating trust

schufa

The Challenge – Elaborated vs. simple regulation

Federal Data Protection Act (old)

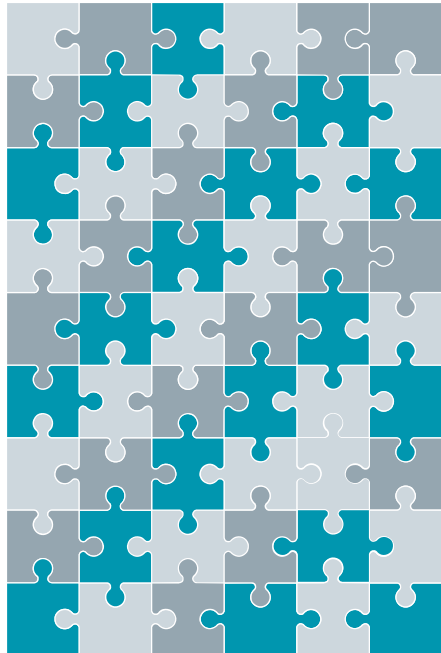
GDPR



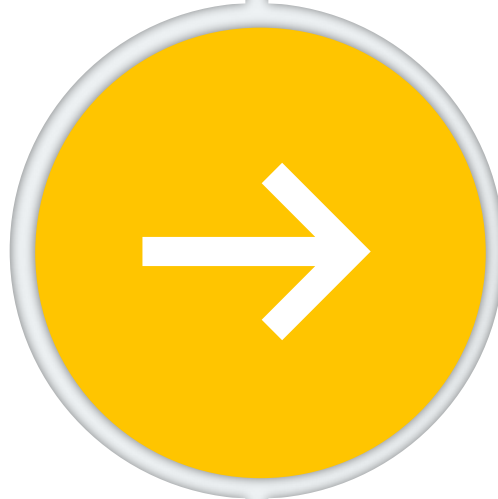
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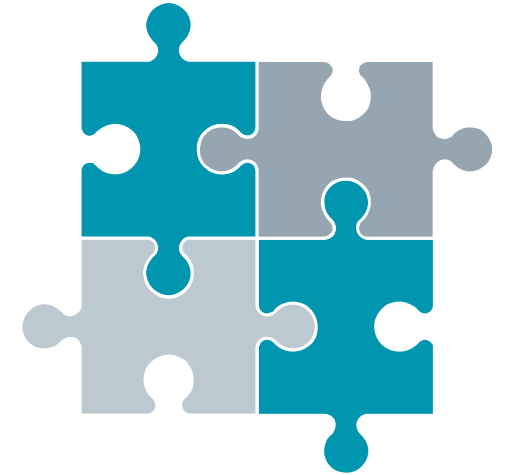
GDPR



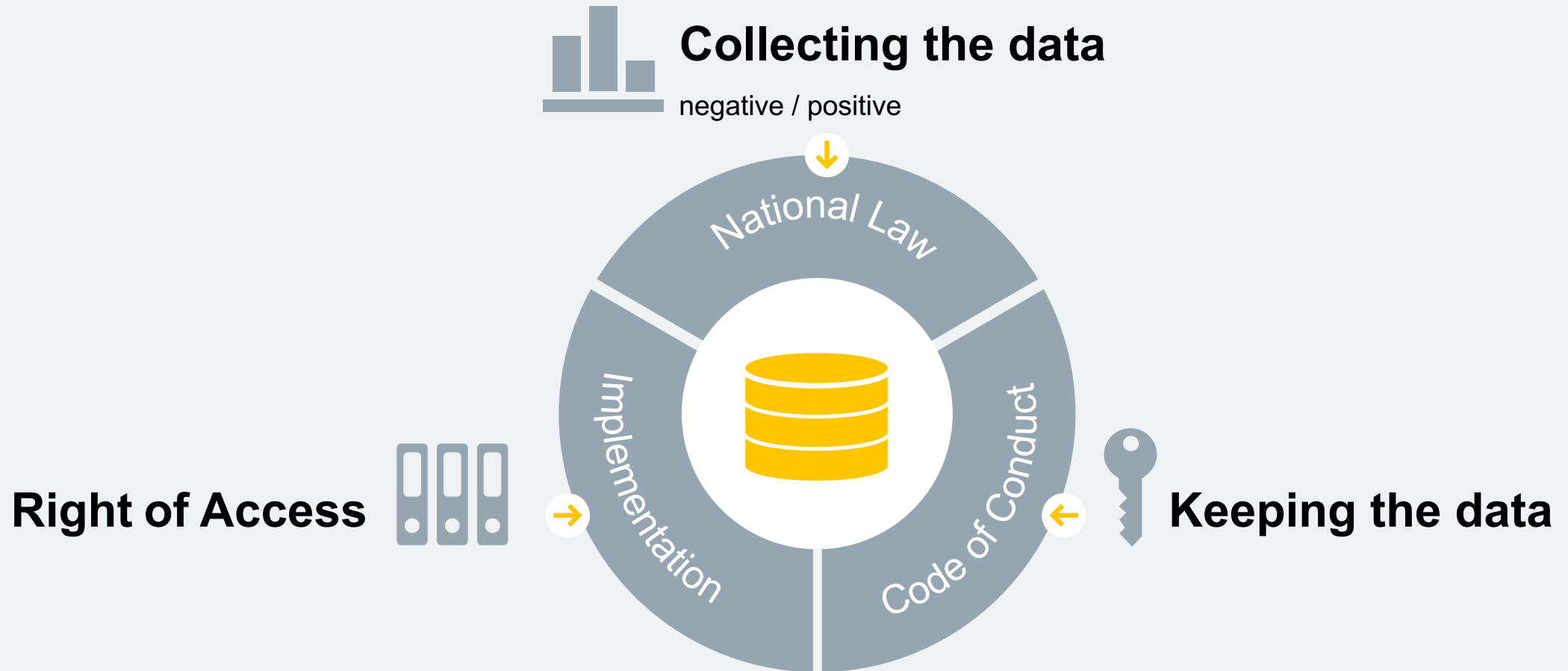
- Right of Access
- Retention periods (3, 4 years)
- Data transfer to CRAs
- Scoring



- No regulations for CRAs ←
- Vage terms ←



The Challenge – How we reached „legal security“



Getting the Data – National legislator helped to establish more legal certainty

Section 31 Federal Data Protection Act = important indication that established procedures are legitimate in Germany under Art. 6 (1) f GDPR

Negative Data

S. 31 Federal Data Protection Act (new) preserves old requirements for transferring negative data to CRAs



Section 31

“Protection of financial/economic transactions and credit history inquiries“

Use of scores only allowed if requirements are met of:

data about non-fulfilled, undisputed claims can only be used if there had been two written reminders (first reminder at least 4 weeks ago)

Getting the Data – National legislator helped to establish more legal certainty

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Negative Data

S. 31 Federal Data Protection Act (new) preserves old requirements for transferring negative data to CRAs

Positive Data

Recitals acknowledge role of CRAs and legitimacy of transferring positive data to CRAs



Recitals

“Provision of **credit information** are foundation of **credit system**“

“Security is created in such a way that transferring of **positive and negative data**, by for example, **credit institutions, (...) telcos, energy (...) companies (...) remain permissible**“

Getting the Data – National legislator helped to establish more legal certainty

Section 31 Federal Data Protection Act = important indication that established procedures are legitimate in Germany under Art. 6 (1) f GDPR

Negative Data

S. 31 Federal Data Protection Act (new) preserves old requirements for transferring negative data to CRAs

Positive Data

Recitals acknowledge role of CRAs and legitimacy of transferring positive data to CRAs

Art. 6 (1) f as one single legal basis

~~SCHUFA-Clause~~ >> SCHUFA-Information

- Coordinated with associations of contractual partners and DPA



Art. 6 (1) f

Legitimate interest

>> indicated by S. 31 / recitals Federal Data Protection Act

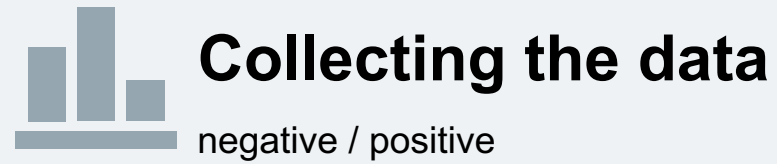


Information

By contractual partners about transferring data to SCHUFA on basis of Art. 6 (1) f

SCHUFA-Information (Art. 14) handed over to consumer by contractual partners

The Challenge – How we reached „legal security“



Keeping the Data – Code of Conduct (CoC)

CoC of German CRA-Association (“DW”) creates certainty for vague principle of Art. 5 I e) “for no longer than is necessary for the purposes”

- Approved by Conference of Data Protection Authorities on 25 May 2018
- Stricter than specific data retention periods of German Data Protection Act for CRAs
- Necessity (legitimate interest) to save concluded matters for 3 more years proven on the basis of datasets to the DPAs in advance



Old Federal Data Protection Act

As long as contract exists

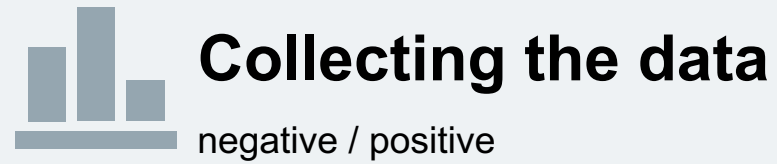
Concluded matters: to be deleted at the **end of the 3d / 4th following year**

New Code of Conduct

As long as contract exists

Concluded matters: **3 years on the day**

The Challenge – How we reached „legal security“



Right of Access – Implementation confronted with high expectations

GDPR establishes lower Right of Access than Federal Data Protection Act

- Our Implementation had to take into consideration high expectations of the public
- As a result SCHUFA established a Right of Access beyond Art. 15 voluntarily



GDPR-Requirements

Stored data, source
Data retention period
Meaningful information about profiling

SCHUFA-Implementation

Stored data, source
Data retention period
Meaningful information about profiling
+ “Basisscore”
+ Information about scores of past 12 months

The Challenge – How we reached „legal security“



Mission accomplished – ... for the time being ...

SCHUFA very well prepared

- Implementation of new IT-procedures completed
- Numerous internal trainings
- Numerous information events with contractual partners

GDPR big topic in the German media

- However, SCHUFA-media inquiries remain quite on the same level
- No specific critical media coverage on SCHUFA-implementation of GDPR for the time being

Consumers are making use use of Right of Access since GDPR

- 28th May – 3rd June: 22.943 online + 1.858 written applications (for comparison: average number of applications/week: 14.500)



The next chapter – true harmonisation has still to be accomplished

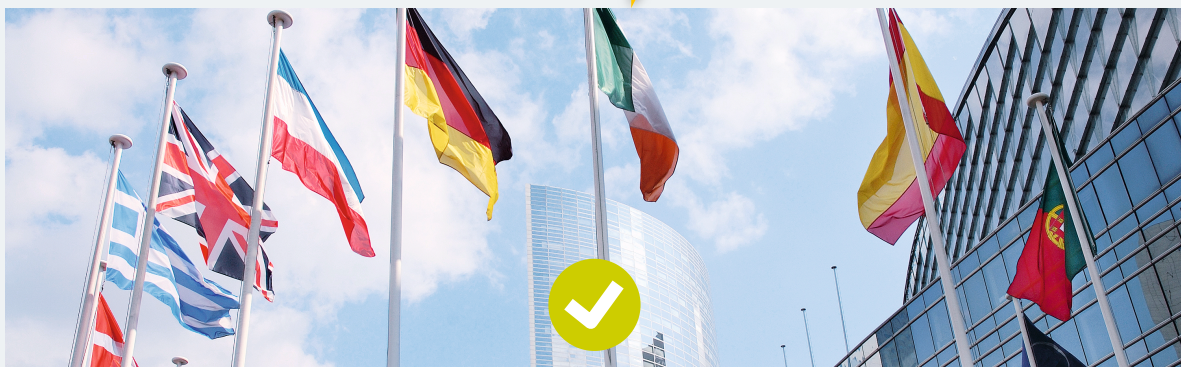


National
Courts

?

European
Data Protection
Board

?



Questions will be resolved by:

National DPAs, European Data Protection Board
National Courts

However:

EU Court of Justice has last decision competence

ACCIS-PAWC:

plays important role in coordinating implementation

Thank you.

We look forward to hearing from you.

Referent

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Thank you.

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