



## THE EU REPRESENTATIVE

With headquarters in the Munich area, Germany, Data Business Services GmbH & Co. KG (DBS) is an international privacy company with effective presence in the EU and the USA and ASIA (South Korea). The goal of the DBS is to help its client companies comply with privacy laws. As one of the outstanding privacy corporations, the DBS is pleased to present one of its products, The EU Representative, to you. Please kindly read the following paragraphs for a better understanding of the said product.

### WHO IS AN EU REPRESENTATIVE?

An EU Representative is an EU-based designee of a non-EU establishment (Data Controller or Data Processor) that is subject to the General Data Protection Regulation (GDPR) of the EU. A natural (individual) or moral (corporation) person can play the role of an EU Representative. The EU Representative is the Controller's or Processor's contact person vis-à-vis European privacy supervisors and data subjects in all matters relating to data processing, to ensure compliance with this GDPR. See Art. 27(4)GDPR.

The purpose of such representation is to enable the European data protection supervisory authorities to ensure compliance with the GDPR, by being able to control or supervise the activities of the non-EU establishments that are subject to the GDPR, through their respective representatives in the EU.

### I AM A NON-EU ESTABLISHMENT.

#### HOW DO I KNOW IF I AM SUBJECT TO THE GDPR?

It is worth stating that all establishments in the EU are subject to the GDPR, irrespective of whether the establishment is the company's head office or just a simple branch or a representation, and irrespective of where the processing takes place. However, a non-EU establishment shall be subject to the GDPR if it regularly undertakes one of the following activities: (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to data subjects in the EU; and/or (b) the monitoring of the behavior of data subjects in the EU, as far as their

behavior takes place within the EU (see Art. 3(2) GDPR). This provision concerns any company that offers goods or services online to EU customers or uses cookies or similar technologies to track EU data subjects. Such establishments must comply with the GDPR, and thus obliged to designate an EU Representative.

However, a non-EU establishment is exempted from designating an EU Representative when the processing is only occasional and does not include, on a large scale, processing of special categories of data as referred to in Article 9(1) GDPR or processing of personal data relating to criminal convictions and offences referred to in Article 10 GDPR, and such processing is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing. Non-EU public authorities and bodies are equally exempted. See Art. 27(2)GDPR.

### **I HAVE AN AFFILIATE COMPANY IN THE EU. DO I STILL NEED TO DESIGNATE AN EU REPRESENTATIVE?**

As earlier mentioned, for a non-EU establishment to be exempted from the EU representation obligation, the company must either be a public body, or has at least a branch or a "representation" in the EU. So a European affiliate of a non-EU establishment is not a branch of the latter, and as such the non-EU establishment remains obliged to designate an EU Representative. The non-EU establishment may choose to designate its EU affiliate as its Representative. However, this type of representation has some shortcomings. Firstly, the object of the EU affiliate may not be data protection, so it would be of little help to the non-EU affiliate. Secondly, EU Representation and the associated data protection activities may not fall within the scope of the company's insured activities. Thirdly and lastly, giving advice and monitoring the activities of the non-EU company as well as cooperating with the European regulators on the latter's behalf, may not fall within the scope of activities of the DPO of the European affiliate. Moreover, this may rather seem to be over-demanding, especially if the DPO is a natural person.

### **NOW I KNOW THAT I AM SUBJECT TO THE GDPR. WHAT WOULD HAPPEN IF I FAIL TO DESIGNATE AN EU REPRESENTATIVE?**

It is worth noting that the GDPR, in force since 25 May 2018, is known for being the most rigorous privacy law on earth at the moment, particularly due to its heavy fines and its extraterritorial character. If a foreign company that is subject to the GDPR refuses to designate an EU Representative as required, then the former is infringing the GDPR and runs the risk of being imposed an administrative fine of up to ten million Euros

(10 000 000 EUR) or up to 2 percent of a company's total worldwide annual turnover of the preceding financial year, whichever is higher. Ignorance of the GDPR would not be an excuse, and the intentional or negligent (willful blindness) character of the infringement (failure to designate an EU Representative) may rather constitute aggravating factors. See Art. 83(1),(2)&(4a) GDPR. It is for these very reasons that most foreign companies are in a haste to designate their respective EU Representatives, and the DBS is here to help you have one.

### **WHY HIRE THE DBS AS YOUR EU REPRESENTATIVE?**

Located in the Munich area, the EU Representation service provided by the DBS is the rightful choice for a good number of reasons:

- **EFFICIENCY:** The DBS is a data protection company with up to 27 years of track record and has own "*chancery*" privacy law firm behind. It comprises of highly qualified and experienced privacy lawyers, consultants and engineers. We are proud of having satisfied all our clients, and we would be pleased to put our know-how at your service.
- **COST EFFECTIVENESS:** The DBS charges just 6000 EUR net per year for its EU representation services, irrespective of the client company's annual turnover. This amount is reasonable, and it is far better than nominating one of your European affiliates to play this role, because it may raise non-compliance problems (e.g. a software company should not act as trustee) or may also be incompatible with insurance policies(e.g. acting as trustee in general not covered by classic corporate insurance policies).
- **INSURANCE COVERAGE:** Since all EU Representatives installed by DBS are specialized Privacy lawyers, the service comes along with a default liability of three Million Euros (with higher representation available at extra cost).
- **PROFESSIONALISM:** Thanks to our sense of professionalism, only specialized Data Privacy lawyers are allowed to act as EU Representatives or handle representation-related matters. When you choose the DBS, a particular privacy lawyer would be assigned to you, for proper attention. Moreover, unlike having to designate an EU affiliate company that might be specialized in other fields of business, data protection is the day-to-day activity of the DBS.
- **ASSURED AVAILABILITY:** In an effort to satisfy its clients, the designated EU Representative would be reachable not only from Monday to Friday (09:00h – 17:00h) via a team of English speaking secretaries, but equally at

weekends via e-mail and cell phone. Also, there is continuity of service at the DBS, thanks to its reasonable number of staff, who would easily substitute each other in case of unforeseen circumstances. This may not be the case when you designate an individual, as everything may come to a standstill in case of an eventuality.

### **HOW DO I DESIGNATE DBS AS MY EU REPRESENTATIVE?**

The designation procedure quite is simple. If you would like to start by contacting the management of DBS, then kindly send an email to:

[niedermeier@data-business-services.com](mailto:niedermeier@data-business-services.com)

When you are ready for the designation, you may then visit our website:

<https://data-business-services.de/en/>

and click on "PRODUCTS" and you would see "EC Rep". Scroll down and click on "INFOS & ORDER" and you may then add the product to the shopping cart, and click on "CONTINUE TO CHECKOUT" at the bottom of the page, and you may then pay the final amount including value added tax.

The payment must be accompanied by a duly signed document designating one of our Lawyers as your EU Representative. In this regard, you would receive a draft designation document, which you would print, sign, and send by post, in accordance with Art. 27(1) GDPR.

### **I HAVE SOME UNANSWERED QUESTIONS. WHO DO I CONTACT?**

For more information, kindly send an email to Mr. Mario E. Mpame, CIPP/E, at:

[mpame@data-business-services.com](mailto:mpame@data-business-services.com)

Generally, you would receive a reply within 24 hours.

THANK YOU