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## CCPA vs. GDPR

### **What is the orientation of the Californian consumer data protection law and how does it differ from the GDPR?**

#### **Introduction**

The Californian Consumer Privacy Act came into force on January 1, 2020 and is the first major privacy law in the United States. Almost exactly 1 ½ Years after the GDPR came into force, the question therefore arises as to what is regulated in the supposedly Californian counterpart to the GDPR and where certain differences to the GDPR lie.

#### **CCPA**

The California Consumer Privacy Act (CCPA) is a national law enacted in the State of California. There is no regulatory competence at federal level in the area of data protection in the USA.

The purpose of the CCPA is to regulate the constitutionally protected right to privacy, which also includes the control and use, in particular the sale of personal information, as set forth in SEC. 2 of the CCPA states.

The CCPA gives Californians additional rights to control how their data is handled. These rights include, among others, disclosure of the data concerned, erasure or complete refusal to sell the data.

Nevertheless, the CCPA reads as a consumer protection law with transparency obligations for certain companies.

## **GDPR**

The General Data Protection Regulation, which came into force on 25 May 2018, is considered a binding regulation of the European Union as a pioneer of data protection awareness in Europe and the world.

The aim of the law is to strengthen the rights of data subjects and ensure the smooth flow of data within the EU. To this end, it grants data subjects a number of data protection rights and imposes a number of obligations on data processing companies, which will now be examined in more detail.

## **Differences**

### Personal scope of application

For personal use, the rights granted by the CCPA are only granted to consumers who are not resident or domiciled in California indefinitely.

In contrast, the GDPR does not require EU citizenship or a place of residence for data subjects, but any living person can be a data subject according to Art. 4 No. 1, recitals 4, 14, 24.

Furthermore, the obligations of the GDPR apply to every legal entity that processes personal data regardless of its size.

The CCPA, on the other hand, only covers those companies that

- for profit
- collect personal information from consumers,
- decide on the means and purpose of the processing,
- do their business in California, and
- meet one of the following three conditions:
  - Annual turnover over 25 million dollars,

- Processes the personal information of at least fifty thousand Californians per year, or
- Generates fifty percent or more of its annual revenue from the sale of personal information.

### Geographical scope

The GDPR is not only applicable to companies in the EU, but also to anyone who addresses his goods or services to EU citizens or monitors their user behaviour in accordance with Art. 3 GDPR.

The CCPA, on the other hand, is aimed exclusively at companies that operate or do business in California. However, it is also possible to do business in California as a non-California company if certain conditions are met in accordance with Sec. 1798.145 (a)(6) CCPA.

### Legal basis

Another difference lies in the systematics and core competence of the law. The CCPA grants the Californian a kind of right to object in the form of an opt-out for the sale of his data, whereas the GDPR places the processing of personal data under one of six legal bases.

The difference is that European law contains a kind of prohibition with a permit requirement, which is granted in California by the possibility of an opt-out. This means that a company can process any data of persons unless the person has expressly objected to this.

### Rights of data subjects

In the CCPA, the Californians are granted a right to object just as in the GDPR. According to this, they can request the companies to stop processing and selling their personal data. This is made possible by the obligation to introduce a "Do Not Sell My Personal Information" button on the homepage. Similarly, the CCPA obliges any third party that has received the data to process it only with the express consent of the individual.

In contrast to the GDPR, the data subject is given the opportunity under Art. 21 GDPR to object to any processing based on the legitimate interests of the controller. This is not limited to a specific purpose of the processing and must be justified by a further balancing of the interests of the parties. In addition, the data subject may object to the processing by withdrawing his or her consent.

## Enforcement

Another difference is in the enforcement and fines of the rules. While both laws recognise the payment of fines for breaches of the regulations, they differ significantly in the amount and the procedure.

In the CCPA, monetary penalties are imposed only by a court and can amount to \$2,500 per violation or \$7,500 per intentional violation. However, there is no upper limit and each violation is brought forward by the prosecution in civil litigation.

According to the GDPR, fines can amount to up to 2% of the preceding year's turnover or up to € 10 million or 4% of the preceding year's turnover or up to € 20 million. The exact calculation is made in each case after weighing the infringement against the circumstances of the individual case. Furthermore, the fines may be imposed directly by the competent supervisory authority.

## Claims for damages

In principle, both laws grant the possibility for data subjects to assert a claim for damages, but coverage in the CCPA is significantly lower.

According to the CCPA, only claims for damages for injuries due to security breaches and technical and organizational measures as well as data breaches are possible. The amount is then determined between \$100 and \$750 per consumer per violation or the real damage, whichever is greater.

In the GDPR, any infringement may give rise to the possibility of a claim for damages, with both material and non-material damage being possible.

## **Similarities**

### Material scope

The GDPR differs relatively little from the CCPA in its factual application. Both laws require processing, whereby the exceptions to processing in the CCPA are greater than in the GDPR. In the GDPR, the processing of anonymized data and for private purposes or in the family sphere is not covered by the GDPR.

Some differences arise from the exceptions to processing in the CCPA for the opt-out right only when selling or sharing personal information or special legal provisions.

## Definitions

There is also broad agreement on the definition of relevant personal data/personal information.

According to the CCPA, the definition of **personal information** (CCPA)

*"information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household".*

and **personal data** (GDPR)

*" any information relating to an identified or identifiable natural person ('data subject')"*

California law contains in its definition another characteristic of personal information that relates to household data. This does not have to be personal, whereas the FADN considers this to be a basic requirement for processing data.

## Pseudonymization

The concept of pseudonymization is very similar in both the GDPR and the CCPA, in the sense that a person can no longer be identified without additional information protected by adequate technical and organizational measures.

The only difference lies in the identification of the data subject after the provision of additional information by the data subject in the exercise of his or her data subject rights pursuant to Art. 11 para. 2 GDPR. This possibility does not exist under the CCPA.

## Rights of data subjects

In their entirety, the data subject rights in the GDPR are comparable with the CCPA. The right to erasure (right to be forgotten) is essentially the same in both laws. They differ only in their application, time limit and exceptions.

Also, very similar are the information duties of the controller, the right of information and the right to data transferability.

*We consult you in all data protection questions and provide an external data protection officer for you. Feel free to contact us!*

*Kind regards, the NOTOS Xperts Team!*