Spotlight on a ruling of the Zurich Commercial Court on anonymisation and pseudonymisation of personal data

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In its ruling HG190107-O of 4 May 2021 the Commercial Court of Zurich ruled that the pseudonymisation of data has the same effect as an anonymisation for those parties who cannot re-assign the pseudonymised data to a specific person.

According the court's ruling, pseudonymised data are no longer considered personal data falling under the scope of the Federal Act on Data Protection (FADP). For those parties having access to the pseudonymisation key and, thus, the option of re-identifying a specific person based on the pseudonymised data, it continues to be personal data falling under the scope of the FADP.

The reasoning of the court confirms that a relative approach is determining the assessment of whether a specific personal reference based on data is possible or not. Thus, the perspective of the data holder is decisive, i.e. in the case of a (cross-border) transfer, the perspective of the recipient.

Background of the decision was a planned transfer of pseudonymised data from a Swiss bank to the United States Department of Justice (DOJ). In the case at hand, it was sufficient that the customers could be re-identified by the DOJ by means of judicial assistance proceedings to qualify the data to be transferred as personal data. The court also held that the process of anonymisation or pseudonymisation of personal data in any case constitutes data processing within the meaning of the FADP and is therefore subject to the respective information obligations.

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No legal or tax advice

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