

The European Union's General Data Protection Regulation – One Year Out

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Overview

- GDPR – General Background
- Guidance Documents
 - European Regulators
 - National Regulators
- Large IT Service Providers
- Changes to national laws
- Reform of the ePrivacy Directive
- Update: International data transfers
- Brexit
- Emerging priorities and best practices



GDPR – General Background

- GDPR was published in the Official Journal of the European Union in May 2016
 - GDPR will have full legal effects from 25 May 2018
- Only one year left to prepare
- Various authorities have indicated that there will be no further grace periods

“With just over a year to go to GDPR, don't delay- ensure you will be well prepared for it today.”

Jonathan Bamford
Head of Parliamentary and Government Affairs



ico.
Information Commissioner's Office



GDPR – Guidance Documents (Europe)

- The Article 29 Working Party has created an initial set of guidance documents:
 - Guidelines on the right to "data portability", WP 242
 - Guidelines on Data Protection Officers ('DPOs'), WP 243
 - Guidelines on The Lead Supervisory Authority, WP 244
- Currently, the authorities are requesting comments (until 23 May 2017) on
 - Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is “likely to result in a high risk” for the purposes of Regulation 2016/679, WP 248



GDPR – Guidance Documents (Planned)

- Certification mechanisms
- High-risk processing
- Data protection impact assessments
- Administrative fines
- Implementation of the European Data Protection Board
- Implementation of the one-stop shop and consistency mechanism
- Consent and profiling
- Transparency
- Data transfers to third countries (Update of existing working paper)
- Data breach notification (Update of existing working paper)



GDPR – National Guidance

- National data protection authorities have also published **guidance** documents, e.g.
 - UK: Profiling and automated decision-making
 - UK: Consent Guidance
 - Germany: Standard Data Protection Model
 - Germany: Existing consents after 25 May 2018
 - Ireland: The GDPR and You
 - Isle of Man: Getting Ready for GDPR (Data Mapping, Accountability)
 - Austria: General overview of the GDPR (German language)



Large Providers of IT Services

- **IT-Service providers** have started updates of their terms and privacy policies
 - Microsoft
 - Amazon
 - Google



EU Update – GDPR

- EU member states are in the process of adapting national law to the GDPR
 - Germany has just passed a reform of national data protection law (taking effect on May 25, 2018) to bring the Federal Data Protection Act in line with the GDPR. Other laws will be changed after the parliamentary election in September 2017.
 - Austria has just published a draft bill.
 - Ireland: Publication of “General Scheme of Data Protection Bill 2017” on May 12, 2017



Update of the ePrivacy Directive

- The ePrivacy Directive 2002/58 is currently being revised
 - ePrivacy Directive will likely be transformed into a Regulation
 - Goal: full legal effects from 25 May 2018
 - Will affect cookies, online consent, OTTs
- Member states and European Commission are currently determining their position. There are doubts regarding the planned timeline.



International Data Transfers

Privacy Shield

- Privacy Shield review will take place in September 2017.
- EU authorities have expressed concerns over new U.S. administration's activities, but have clarified that activities so far have not affected the validity of Privacy Shield.
- Several lawsuits against the Privacy Shield decision have been initiated at the Court of Justice of the European Union, admissibility is unclear.



International Data Transfers

Standard Contractual Clauses

- In February, the Irish High Court held three weeks of hearings in a case about the validity of the EU Standard Contractual Clauses.
- The court might refer the matter to the CJEU.



Brexit

- The United Kingdom will leave the European Union in March 2018, unless the negotiations between the EU and UK lead to a different date
- The GDPR will be applicable in the UK at least until Brexit, “Great Repeal Bill” will likely make the GDPR national law of the UK
- Adequacy status for the UK?
- Role of the ICO post-Brexit?

Emerging Priorities and Best Practices

- Internal data mapping, information gathering
- Prepare for PIA/DPIAs
- Determine geographic footprint and lead supervisory authority
- Identify key personnel, including DPO
- Review relationships with (IT) service providers, update contracts
- Prepare for new data breach notification requirements
- Consent and/or legitimate interests – what is the right route for e.g. marketing?
- Policies and procedures for responding to data subject requests
- Expect and prepare for litigation



Questions?

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