

Summary

On 25 January 2012, the European Commission published a proposal for a Data Protection Regulation (the "Proposed Regulation") that is intended to replace the current regulatory framework in Europe. If adopted, the Proposed Regulation will introduce major changes that will affect not only businesses based in the EU but also organisations headquartered in the US and other countries that trade with Europe. The penalties for non-compliance, of up to 2% of global turnover, will give data protection and privacy compliance board-level prominence.

The stated aim of the Proposed Regulation is to bring the existing law, which is nearly two decades old, into line with modern business practice and a global economy. In practical terms, the Proposed Regulation could have a significant effect on the evolution of Internet-based businesses and the way in which virtually all companies with European employees, customers or suppliers organise themselves and conduct business.

Key changes

We will be advising clients on the detailed implications of the proposed changes for their business organisations and business sectors (including the treatment of employee data). The main highlights include:

- A single set of rules on data protection that will apply across the EU, instead of 27 different sets of rules as at present. The EU Commissioner in charge of the Proposed Regulation has stated that the German model, one of the most prescriptive in Europe, is "among the best".
- Multinational organisations will have to deal with only a single national data protection authority, in the EU country where they have their main establishment.
- Current obligations on all companies to register their data processing activities with the national data protection authority will be eliminated.
- Organisations must report serious data breaches to the national data protection authority as soon as possible (if feasible, within 24 hours).
- For the first time, specific obligations and potential penalties will be placed on organisations that process personal data for other companies, including cloud computing providers.
- Wherever consent is required in order to process personal data, it must be explicit.
- Individuals will have a right to "data portability" that will make access easier and provide a right to transfer personal data to another service provider.

- Companies with more than 250 employees will be required to appoint a data protection officer.
- A "right to be forgotten" is to be introduced, allowing individuals to have their data deleted if there are no legitimate grounds for keeping it.
- Consideration will be given to whether the EU/US Safe Harbour scheme needs to be changed.
- Individual national data protection authorities will be strengthened so they can better enforce the rules. They will be authorised to levy increased fines against companies that breach EU data protection rules.

Next steps

If adopted as proposed, the Regulation will have a major impact on all organisations based in Europe or doing business with Europe. The Proposed Regulation will now be considered by the European Parliament as well as the Council of Ministers. Considerable negotiation is expected and will afford opportunities for amendment of the draft. The likelihood is that at least some of the proposals will be accepted, although they will not come into force until two years after the final Regulation is adopted.

For further information on how the Proposed Regulation could affect your business and how to have an impact on the legislative debate, please contact a member of Squire Sanders' Global Data Privacy Team, which includes practitioners in each of our 36 offices in 17 countries around the world.

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