

Data Protection Regulation Confirmed

D&I Alert

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» Data Protection, Marketing & Consumers

> DATA PROTECTION REGULATION CONFIRMED

Through their agreement late last night on Tuesday 15 December 2015 the European Parliament and the Council have confirmed the contents of the Data Protection Regulation ("Regulation"), the first draft of which was originally put forward by the European Commission in 2012. As a result of last night's agreement, the Regulation will replace the Data Protection Directive (95/46/EC) and Finnish Personal Data Act (523/1999) in two years' time.

Company Obligations Taking a Whole New Level

The Regulation is a big step forward in harmonising data protection laws throughout the European Union. It brings about substantial changes to data processing both within companies and in relation to third parties such as service providers and regulatory authorities. The changes coming your way include fines up to 4 % of your company's global sales.

In harmonising laws and – hopefully – reducing national administrative procedures related to day-to-day business, the Regulation aims to tear down existing barriers in EU wide commerce. However, while doing so, the Regulation significantly increases compliance costs and creates unprecedented obligations for companies.

The Finnish Ministry of Justice has assigned Dittmar & Indrenius to prepare a report on the impact of the Regulation on companies established in Finland.

> CHANGES COMING YOUR WAY

Get an Early Start in Order to Make the Transition Period as Smooth as Possible

We have listed a few Regulation related obligations that your company might want to get an early start on in order to make the transition period as smooth as possible:

1. ***Preparing for Accountability.*** The Regulation shifts the focus of privacy governance from mere compliance to accountability. Adjusting the corporate mind-set from a "just do it" attitude to a "can you prove it" approach ultimately causes a great number of changes throughout organisations, which must be put in place during the next two years. In practice, the Regulation requires companies to review their current data protection practices and set up processes that guarantee the paper trail necessary to prove they have duly carried out their obligations.
2. ***Appointing a Data Protection Officer.*** If your company processes personal data as a core part of its business and that data includes large amounts of sensitive personal data or entails monitoring, you are obliged to appoint a data protection officer ("DPO"). Appointing a DPO

may require training an existing employee almost from scratch or hiring a new one – both of which take time.

Even if you are not *required* to appoint a DPO based on the Regulation, your company may want to set up a privacy function and appoint a DPO anyway in order to ensure that your data protection obligations are efficiently and fully carried out.

3. **Getting Ready for Data Breach Notifications.** Under the Regulation your company will be subject to a strict new obligation to notify both the authorities and data subjects of the breach of their personal data. In order to be able to comply with these notification obligations, companies are required to have a detailed data breach action plan. As notifications increase the publicity of data breaches, the goal is not only to fulfil mandatory obligations, but also ensure that the resulting negative publicity is kept to a bare minimum.
4. **Reviewing Data Processor Obligations.** The Regulation significantly impacts the provision of services whenever these entail data processing. As a result, the Regulation increases processor obligations and calls for detailed written data processing agreements. Therefore, regardless of whether you operate as a controller or a processor, it is advisable to take a look at your data processing arrangements – especially the agreements – and start implementing changes well before the Regulation comes into force.
5. **Evaluating the Effect of Sanctions.** The Regulation brings about administrative sanctions, previously unknown to the Finnish data protection regime. The sanctions significantly alter the nature and increase the level of risks related to data processing and affect both you and your service providers. Therefore, companies should evaluate the effects of the sanctions and take measures to mitigate the risks through, for example, liability clauses, insurances and pricing. The maximum amount of fines was set at 4 % of worldwide annual turnover.
6. **Think: business advantages.** The Regulation creates new business opportunities and calls for innovative new services in an EU-wide harmonised market. Are you up to the challenge?

For more information and guidance on the decision's implications on your company, please contact the head of our Data Protection, Marketing & Consumers practice group, [Jukka Lång](#).

*Jukka Lång*

Jukka heads the firm's Data Protection, Marketing & Consumers practice group. He specialises in the legal issues that derive from the use of information technology and the internet.

Jukka was recently elected as a member of a working party of the Ministry of Transport and Communications planning the national data security strategy and enhancing competitiveness of digitised business.

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