

**Newsletter**



**Newsletter: Revolution coming to data protection law in 2018**

In May 2016, the Official Journal of the European Union published the “General Data Protection Regulation”, which represents the greatest change in data protection law in the last 20 years.

The Regulation will go into effect on 25 May 2018, and companies who processes personal data will have to thoroughly prepare themselves given that infringing certain provisions of the Regulation may be subject to fines of up to EUR 20,000,000 or 4 % of the company’s total worldwide annual turnover in the preceding financial year (the fine does not affect data subjects’ right to receive compensation).

Below are some interesting points about the new legislation.

**Wide-ranging application.** The Regulation will impact every personal data controller or processor who is established in the EU. The legal form of the establishment does not matter; what is important is the activities it performs. The new legislation will also apply to controllers and processors who are not established in the EU, but offer goods or services to data subjects in the EU or monitor their behaviour. These controllers or processors will be obliged to designate a representative in the EU.

**Consent.** The Regulation expressly stipulates the right of data subjects to withdraw their consent to processing their personal data. Withdrawing consent must be as easy as giving it.

**Children on the Internet.** Children aged 16 and older may consent to the processing of their personal data in relation to an offer from information society services (Member States may lower this limit to 13 years of age). Parental consent is required for younger children and controllers must make reasonable efforts to verify that a child’s legal guardian is in fact giving the consent.

**Increased information duty.** Controllers will be obliged to provide data subjects with a whole range of information and communication, including e.g. information about the possible consequences of failing to provide obligatory personal data or about potential automated decision-making and profiling. According to the Regulation, the information should be concise, transparent and easy to understand (despite the fact that the information duty is stipulated over more than six pages in the Regulation).

**New rights of data subjects.** Under the Regulation, data subjects will have entirely new rights, especially the right not to be subject to any decision solely based on automated processing (e.g. automated refusal of an on-line loan application), the right to be forgotten or the right to restrict processing.

**Processor.** The Regulation establishes a range of new requirements for contracts in which the processor is authorised to process personal data. “Chains of processors” are also regulated.

**Obligation to notify a personal data breach.** Controllers will be obliged to notify the supervisory authority without undue delay and, where feasible, within 72 hours, of any personal data breach unless the breach is unlikely to risk the rights and freedoms of natural persons. In more serious cases, the controller will have to directly contact the affected data subjects.

**Codes of conduct and certificates.** Controllers and processors will be allowed to opt to adhere to approved codes of conduct or get a certificate to demonstrate compliance with their obligations.

**The 250-employee limit.** Enterprises or organisations that employ over 250 persons will have more administrative responsibilities in relation to personal data processing.

**Data protection officer.** Some controllers and processors will be obliged to designate “a data protection officer” who has expert knowledge of data protection laws and practices, e.g. where large-scale, regular and systematic monitoring of data subjects is carried out or where special categories of data are processed on a large scale.

**Differing national legislation.** In many cases, the Regulation allows for different national rules. It is thus possible that the real impact of the Regulation in the Czech Republic will change in connection with the newly adopted legislation.

If you have any questions regarding the new General Data Protection Regulation, please feel free to contact us. We would be happy to share our knowledge and experience with you.

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