

Legal Alert

5/2016**Data protection reform in the EU will significantly impact Slovak law**

On 14 April 2016 the European Parliament adopted the new General Data Protection Regulation (the "GDPR"). As a result, the new legislative framework for European data protection rules will become a reality. The GDPR will replace the obsolete Data Protection Directive 95/46/EC. It will become effective 2 years and 20 days after its publication in the EU Official Journal and will be binding and directly applicable in all Member States including Slovakia. The anticipated date of effectiveness is the beginning of 2018.

What is the aim of the GDPR?

The GDPR is mainly aimed at strengthening data protection related to the rights of natural persons and reducing the administrative burdens connected to their protection. Another priority of the new legislation is to facilitate the free flow of personal data in the digital single market, which should remove from international companies a significant administrative burden related to ensuring compliance with the local laws of various European states.

The GDPR aims to positively increase consumers' legal certainty and promote economic competition within the European Union. On another hand, in Slovakia the upper limit of possible sanctions for a breach of data protection laws will increase significantly.

What important changes does the GDPR introduce?

- Conditions regarding a child's consent – with respect to offering information society services directly to a person under the age of 16, the processing of personal data will be lawful only if such consent is given or authorised by his/her legal guardian;
- Right to be forgotten – the data subject will have a right to obtain from the controller the erasure of his/her personal data if e.g. such data are no longer necessary for the purpose of its collection, the data subject withdraws his/her consent with the processing or the data subject objects to the processing and there is no other legal ground or prevailing legitimate reason for such processing;
- The right to data transferability – the data subject has the right to transfer personal data which he/she has provided to a controller to another controller without obstructions from the side of the original controller;
- The right of the data subject to know that his/her personal data has been hacked – the controller is obliged without undue delay and no later than 72 hours after becoming aware of such infringement to notify the respective supervisory body;
- Appraisal of the impact on data protection – if the processing is likely to result in a high risk to rights and freedoms of natural persons, prior to the processing the controller will have to carry out an appraisal of the impact of the intended processing operations on the protection of personal data. The controller will have to consult the supervisory body prior to processing in case the appraisal indicates that processing may result in a high risk;

- European Data Protection Board – a new independent body of the European Union will be established, which will be a legal person and will be composed of the head of the supervisory body of each Member State and of the European Data Protection Supervisor and will ensure the correct application of the Regulation by e.g. monitoring, issuing guidelines and promoting cooperation between the supervisory bodies;
- The right to file a complaint – every data subject will have the right to file a complaint with his/her respective supervisory body if he/she supposes that the processing of personal data relating to him/her breaches the regulation;
- Sanctions – in case of infringements of GDPR provisions or failure to comply with an order of the supervisory body a fine of up to EUR 20,000,000 or in the case of an enterprise up to 4 % of the total worldwide annual turnover for the previous financial year may be imposed.

What impact could the GDPR have on businesses?

- The GDPR should save companies approximately EUR 2.3 billion per year e.g. the costs for local legal advice in the cross-border provision of goods and services, simplified communication with just one supervisory body would save administrative costs.
- The uniform level of data protection may be useful for international companies.
- Contrary to the above mentioned, Member States may stipulate more specific rules for ensuring the protection of the rights of employees in respect to the processing of their personal data in employment.
- Each controller will be obliged to maintain records regarding the processing activities for which he/she is responsible.
- The controller and the processor will have to designate a data protection officer if its core activities are inter alia specific processing operations under the GDPR or processing the special categories of personal data in a large amount and the personal data regarding criminal convictions and offences.
- With respect to the territorial scope of the GDPR, this will also apply to the controller or the processor who is not established in the European Union if its processing activities relate to the offering of goods and services to data subjects in the European Union or with monitoring the behaviour of such data subjects within the territory of the European Union.

Conclusion

The European Parliament has approved EU data protection reform. This means not only strengthening the data protection rights of natural persons but it also brings a number of changes and obligations for the controller and the processor, which will have an impact on business entities. There is still approximately two years to achieve compliance with the new Regulation. However, some of changes may need time to implement and this should not be underestimated. Such changes depend mainly on the size of a company and its business. Our law firm is prepared to provide you with further information as well as legal assistance in this matter.

Contacts:

In case of any questions, please do not hesitate to contact your contact person in our office, or approach JUDr. Helga Maďarová (helga.madarova@bapol.sk) or Mgr. Marek Orosz (marek.orosz@bapol.sk).

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