

Privacy Update

Lorenz Privacy Team

On Wednesday, January 25, 2012, the European Commission (EC) published a draft text of the proposed data protection regulation¹ (Regulation). The Regulation seeks to streamline data protection rules throughout the European Union (EU) and limit the administrative burdens associated with the current divergences in approach and enforcement.

During an announcement at the Computers, Privacy & Data Protection's Fifth International Conference taking place in Brussels on the same day, Ms. Francoise Le Bail, Director-General for DG Justice, introduced the new Regulation and highlighted its goals. The EC seeks to strengthen individual rights through the clarification of consent, an inclusion of the right to be forgotten, and data breach notification requirements. Simultaneously, the Regulation serves businesses by seeking to eliminate the differences in approach between the 27 member states. This is effectuated through the introduction of a single (lead) data protection authority (DPA), a single system of notification, and other measures. This uniformity and legal certainty will be further facilitated by the creation of a data protection board, which will harmonize and serve as a point of cooperation between DPAs. Finally, although the Regulation is still founded on the principles of Directive 95/46/EC, certain elements, such as the applicable law requirements, have been redrafted in line with more modern conceptions on law and technology.

Overall, these changes should strike a positive note for companies and businesses operating in Europe. Nevertheless, some criticize the draft for overlooking SMEs and for not be sufficiently clear in articulating certain requirements (e.g. privacy impact assessments, privacy by design, etc.). Further, other issues, such as cloud computing scenarios and international transfers for processors, seem to be left out altogether.

In any event, it is anticipated that the new regulation will save costs and create a level playing field with respect to data protection throughout the EU.

The full text of the Regulation is available [here](#). An overview of the current legislative activities is available at DG Justice's [website](#).

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As always, we remain at your service to answer any questions and we will keep you updated as the process progresses.

Kind regards,

Jan Dhont & Katherine Woodcock, for the Lorenz Privacy Team

¹ "Proposal for a Regulation of the European Parliament and of the Council on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)", COD(2012) 11 Final.