



## GENERAL DATA PROTECTION REGULATION (GDPR): ONE YEAR ON – EUROPEAN OVERVIEW ON KEY DEVELOPMENTS

### EDITORIAL

Dear Reader,

It is the first anniversary of the GDPR. After a stressful finish to May 25, 2018 we were all excited to learn how the authorities would enforce this law which fundamentally changed the rules of data processing within the European Union.

Fortunately, there was no explosion of decisions and fines imposed after the deadline. We recognized that the authorities themselves struggled to be ready for their new tasks within the last year.

However, we would like to take this opportunity to provide you with an **overview** on the recent developments in the EU member states regarding GDPR. First decisions have been made, fines have been imposed, local law entered into force. This overview on various European countries is rather unique.

Each member state of the EU took a different approach and various main points to bring out.

GDPR is not a project; it is an ongoing process you need to consider in your day-to-day business. Although the authorities did not impose many fines they made clear that they will play tough with respect to companies which ignore data privacy and the rights of the affected persons. One thing is having started but not being ready yet, the other not getting prepared at all. For the latter, severe sanctions are to be expected to provide a deterring example for other businesses, like e.g. the Google case in France. Apart from GDPR, significant adverse marketing effects will need to be considered as well.

Hence, it is never too late for making your company compliant with GDPR and updating your processes.

START TODAY.

Your SCHINDHELM GDPR Team



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## AUSTRIA

**I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?**

Yes, there is a local law, the so-called “*Datenschutzgesetz – DSG*” (= Data Protection Act).

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**II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?**

- Fundamental Right on data protection
- Specifying clauses as to
  - data protection officer,
  - data secrecy,
  - processing for specific purposes
  - image processing, and
  - legal remedies, liability and sanctions data protection and security.

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**III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?**

The GDPR has already been implemented by the majority of companies.

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**IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?**

*Datenschutzbehörde* (= Data Protection Authority) located in Barichgasse 40-42, 1030 Vienna, <https://www.dsb.gv.at/>

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**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

EUR 4.800,00 because of illegal video control (DSB-D550.038/0003-DSB/2018 on 12.09.2018).

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**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

The fines are paid to the federal state (§ 30 (4) DSG).

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**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

The Austrian Data Protection Authority says: “first admonish then punish”. Because of this up to now there have only been five punishments in Austria.

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**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

- Implementing the Records of processing activities
- Implementing the correct contracts.



**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

Especially storage period in case of different limitation periods mentioned in Austrian law

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**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

1. Elevating of the processing activities in the company;
  2. defining purposes, lawfulness, storage;
  3. period, role allocation of controller and processor (= Data-Due-Diligence); this step is the basic for the Records of processing activities
  4. implementing an information referred to in Article 13 and 14 GDPR for single purposes as well as a general data privacy statement for websites;
  5. implementing the main contracts required under the GDPR;
  6. proofing the necessity of Designation of the data protection officer and implementing a Data protection impact assessment;
  7. implementing data protection guidelines;
  8. implementing samples to be prepared in case of enforcement of rights by a data subject or in case of a personal data breach; and
  9. continuous improvement process (CIP).
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## BELGIUM

### I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?

Yes, by the

- Law of 3 December 2017 establishing the Data Protection Authority
- Law of 30 July 2018 on the protection of individuals with regard to the processing of personal data.

### II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?

- The age for being able to consent referred to in Article 8.1 GDPR is lowered to 13 years;
- List of processing operations required for reasons of substantial public interest pursuant to Article 9(2)(g) GDPR;
- Additional protective measures in the event of processing of genetic, biometric or health data;
- Cases in which the prohibition on the processing of data relating to criminal convictions and offences is being lifted;
- Cases in which the rights of the data subjects are limited;
- Specific provisions for the public sector;
- Exemptions and derogations for processing for journalistic purposes and for academic, artistic and literary expression;
- Specific provisions for scientific, historical and statistical research purposes;
- Specific provisions for the police, intelligence and security services; and
- The non-application of administrative fines to public authorities.

### III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?

As for Belgium, the process went very slow and there was not much information made available by the Belgian authorities. On March 29, 2019 the Belgian parliament appointed new data protection commissioners to speed up the process. Hence, we assume that only 30 % of the companies in Belgium comply with GDPR.

### IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?

Data Protection Authority (“Autorité de protection des données” / “Gegevensbeschermingsautoriteit”)  
[www.dataprotectionauthority.be](http://www.dataprotectionauthority.be)



**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

No sanction has yet been imposed.

**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

Federal Treasury

**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

The Data Protection Authority is currently giving priority to advising and guiding professionals and citizens on their new rights and duties.

**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

Data retention and erasure (identify and clean up all historical databases of a company).

**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

- Lack of a legal basis allowing insurers to process special categories data other than with the consent of the data subjects
- Lack of possibilities to transfer personal data outside the EEA when the recipient refuses to sign the European Commission's standard contractual clauses and the data subject is an employee, which makes the use of consent difficult

**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

The first and most important step in determining a consistent approach is the inventory of processing operations and personal data handled by the company. If this exercise is not carried out correctly or completely, it is very difficult to adopt a systematic and quality approach.

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## CZECH REPUBLIC

### **I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?**

Yes, the GDPR has been implemented into the Czech law by Act No. 110/2019 Coll. on processing of personal data.

### **II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?**

There are only few things in which the Czech legislator adjusted the GDPR. We are highlighting esp. the following:

The definition of the “public body” mentioned inter alia in the Art. 27 of GDPR. Czech legislator had to come up with definition in local law as GDPR has no such definition but stipulates certain obligations for such bodies such as the requirement to have the data protection officer.

Within the most discussed legal problems in Czech Republic in connection with the GDPR fall the conditions applicable to child's consent in relation to information society services. The Czech law implemented lower age limit for the processing of the personal data of children without the need of consent of their parents, namely from 15th year of age.

The local law also lowered the limits of monetary Sanction for public authorities and bodies, whereby the maximum monetary sanction for public authorities and bodies shall not exceed 10 Mil. CZK. Czech legislator hereby used the option stipulated in Art. 87 (7) of GDPR.

### **III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?**

It is not possible to state precise number, but we would assume that the majority of companies (more than 80 %) have adjusted the intern rules and processes in order to comply with the requirements of GDPR.

### **IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?**

The Office for personal data protection.  
[https:// www.uoou.cz/en/](https://www.uoou.cz/en/)



**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

So far, the highest sanction imposed by the Czech authority based on the GDPR is a fine in the amount of ca. 10 000 EUR, although the decision concerning this fine is not in force yet. Czech authority has not published the facts of the breach. However, the authority mentions that the breach concerns Art. 5 (1) c) and e) of GDPR, thus the data minimization and storage limitation

**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

The fines collected based on the GDPR are revenues of the Czech national budget.

**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

So far, there have been only a few proceedings where the final decision was made. The few sanctions that have been imposed so far by the authority mostly were comprised of fines. The authority may also apply its corrective powers based on the Art. 58 (2) of GDPR.

**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

Issues concerning the camera systems. Further, the issues concerning employees such as the databases and personal data that may be processed.

**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

As the law implementing the GDPR has been issued, most of the issues have already been dealt with and further legal problems may arise based on the application in the future.

**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

The most important is to set the internal processes in order to comply with the GDPR requirements, thus to implement adequate

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## FRANCE

**I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?**

Yes, by the Law N° 2018-493 of 20 June 2018 modifying the law n° 78-17 of 6 January 1978 relating to data processing, files and freedoms.

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**II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?**

- Adaptation of the role of the CNIL and its powers of control and sanction;
- Strengthening the protection of sensitive personal data and derogations (e.g. processing of biometric data strictly necessary for access controls in the workplace);
- preliminary formalities maintained for certain processing operations (e.g. national identification number, public security...);
- particular categories of data (extension of the list of entities authorised to process these data); and
- “numerical majority” set at 15 years.

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**III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?**

50 %

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**IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?**

National Commission on Informatics and Freedoms (“Commission Nationale de l'Informatique et des Libertés”)

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**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

50 million Euros against Google for various data breaches with respect to their online services. Among others, Google did not comply with the requirement of providing easily accessible and transparent information to the users of their services.

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**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

It was considered to use the proceeds of the fines imposed by the CNIL to finance accompanying measures to help data controllers to comply with the GDPR, but this proposal was ultimately not voted.

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**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

- The CNIL took a pragmatic approach to GDPR enforcement. While with respect to fundamental principles of data protection which already existed strict compliance checks are going to be continued, CNIL will merely advise with respect to the new rules and not impose fines in the first months.
- The CNIL issued official notices to companies that their services were not compliant with consumer consent rules under the GDPR.
- The CNIL published an activity report for 2018 (see <https://www.cnil.fr/en/presentation-2018-activity-report-and-2019-issues-french-data-protection-authority>).

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**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

Data retention and erasure (identify and clean up all historical databases of a company)

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**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

- Compliance of the GDPR with the “blockchain” technology;
- Data transfer to third parties.

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**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

- Keep proper records of your processing activities;
- Check your contracts with respect to data processing, including but not limited to data processing by order or joint control; and
- Analyze and record the company’s technical and organizational measures.

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## GERMANY

**I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?**

Yes, the Federal Data Protection Act (“Bundesdatenschutzgesetz” – “BDSG”) has been updated and entered into force on May 25, 2018.

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**II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?**

- Requirement of a data protection officer (DPO): Companies with 10 or more individuals permanently involved in the automatic processing of personal data will need to appoint a DPO.
- The duty to bind any individual processing personal data to confidentiality (§ 53 BDSG).
- Specific requirements for video surveillance enabling such measures at places open to the public, like parking places, malls or stadiums.

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**III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?**

The awareness of the new rules was very high. Hence, we assume that about 80 % of the companies already comply with GDPR.

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**IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?**

Data Protection is subject to the German *Laender*. Hence, there are 16 different data protection authorities, like e.g. for Bavaria or Lower Saxony.

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**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

80.000 Euros by the Data Protection Authority of the Land Baden-Württemberg against a service provider for making available health data on the Internet.

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**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

The fines accrue to the government treasury and are distributed to public institutions. A part will be donated to charitable causes.

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**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

The authorities took a gradual approach taking into account that the GDPR is really demanding for smaller companies. First of all they support and advise companies. One data protection authority sent a questionnaire to 100 companies for getting a picture on the compliance with GDPR in their *Bundesland*. However, they also made clear that there will be notable sanctions for companies which generally not value the task of protecting personal data.



**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

- Cleaning up and analyzing the company's data;
- Data Processing within the company group including the transfer to third party countries;
- Compliance with the duties to delete data within the legal deadlines;
- Evaluating the need of a data processing agreement or joint control agreement;

**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

- Use of cookies: Does a company need consent for implementing those on my site?
- Can a company still refer to the rules of the German Telemedia Act which stipulates a privilege for the use of data under pseudonym?

**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

- Analyze and evaluate your company's data processing properly;
- Concentrate on the company's public image first (like the website's data privacy policy and treatment of customer data); and
- Share responsibilities and knowledge with respect to data protection; don't just leave it up to your DPO. This will not be successful in the end.

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## HUNGARY

### I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?

The GDPR has direct effect in Hungary and in order to ensure harmonization between the GDPR and the local laws, recently around 80 local regulations have been changed. The most important of those are:

1. Act on information self-determination and freedom of information
2. Act on the Labor Code
3. Act on property protection

### II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?

The main area where Hungarian law provides for supplementary regulations are:

- Labour law:
  - management of biometric data;
  - management of criminal data;
  - exercising of control rights over the employees;
- Act on property protection:
  - legal basis of the data management in case of CCTV use is legal interest
- Act on information self-determination and freedom of information:
  - for statutory data management or that based on public interest the necessity shall be reviewed in every three years
  - DPO has a confidentiality obligation also after termination of his/her position

### III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?

About 30 %

### IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?

Hungarian National Authority for Data Protection and Freedom of Information (Nemzeti Adatvédelmi és Információszabadság Hatóság, “NAIH”)

### V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?

In Hungary, the highest sanction amounted were HUF 11.000.000 (~ EUR 34.000).



**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

The fines collected are part of the central budget. The government spends the most on the following three areas in 2019:

- Retirement benefits (20, 1%)
- Social security (10, 6%)
- Education (10, 4%)

**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

Other measures typically taken by the authority:

- Warning the data controller or data processor that certain data management activities violate GDPR provisions;
- Ordering to notify personal data breach to the data subjects; and
- Temporarily or permanently restricting data management.

**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

The most difficult issues of our clients to comply with GDPR are:

- Maintaining a clean desk policy;
- Locking of documents containing personal data used on a continuous basis;
- Legitimate use of CCTV, no use for controlling the employees activities; and
- Informing data subjects on erasing their data, but being able to prove at the same time that they did and informed the data subject (e-mail, name, contact details shall be stored for that).

**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

1. Topic of 'legitimate interest' in data management
2. Data transfer to third parties

**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

- Conducting a legal audit of data management
- Review and update documentation and
- Staff education

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## ITALY

**I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?**

The GDPR has been implemented in Italy through the “Decreto Legislativo (D.lgs.) n. 101/2018” that modified the previous “D.lgs. n. 196/2003”

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**II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?**

The need to hand over a copy of the company’s privacy policy to job applicants and raise of the age to legitimate the underage consent to 13 years.

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**III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?**

In Italy, only 23 % of companies have been totally complying with GDPR (internet article of federprivacy, 06/02/2019).

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**IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?**

The Italian Data Protection Authority (Garante per la protezione dei dati personali) is an independent administrative authority established by the so- called privacy law (Law No. 675 of 31 December 1996) and regulated subsequently by the Personal Data Protection Code (Legislative Decree No. 196 of 30 June 2003).

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**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

11 million Euros to a Money transfer company for data processing without proper consent of the affected individuals. However, this fine has been imposed BEFORE the GDPR entered into force. Under the GDPR no sanctions have been taken so far as the Italian Data Protection Authority has specified a so-called “period of grace” which ended May 17, 2019.

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**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

To increase controls on companies on the correct application of GDPR. Hence, the Italian Data Protection Authority may keep the fine and has an own commercial interest in imposing it.

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**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

The Italian Data Protection Authority is obliged to report to other authorities in order to evaluate eventual criminal sanctions (for example unlawful data processing).

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**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

The awareness of the processors of the importance for their business to comply with the requirements of the GDPR.

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**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

The GDPR does not regulate in detail electronic communications. The ePrivacy Ordinance, which was supposed to regulate this area has not been entered into force. Thus, there are many open questions relating to marketing measures.

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**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

It would be appropriate to have an internal privacy expert or an internal team that takes care of data privacy issues.

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## LUXEMBOURG

**I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?**

Yes, by the Law of 1st August 2018 on the organization of the National Data Protection Commission and implementation of the GDPR.

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**II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?**

- Freedom of expression and information;
- Processing for scientific or historical research or statistical purposes;
- Data processing for employee monitoring purposes; and
- Prohibition of the processing of genetic data in the context of employment law and insurance.

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**III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?**

20 %

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**IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?**

National Commission for Data Protection (“Commission nationale pour la protection des données” / “Nationale Kommission für den Datenschutz”)  
[www.cnpd.lu](http://www.cnpd.lu)

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**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

No sanction has yet been imposed.

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**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

Registration and domain administration

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**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

CNPD released a black list of processing activities requiring a data impact assessment. It advised companies and published papers to bring GDPR closer to companies.

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**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

Data retention and erasure (identify and clean up all historical databases of a company)



**IX. WHAT ARE THE MAIN UNSOLVED  
LEGAL PROBLEMS HIGHLY  
DISCUSSED IN YOUR COUNTRY?**

- How does the right to be “forgotten” match with mandatory local law, e.g. employment law?
- How can charities continue their work and nevertheless comply with GDPR?

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**X. FROM YOUR EXPERIENCE, WHAT  
ARE YOUR RECOMMENDATIONS TO  
MAKE A COMPANY GDPR-  
COMPLIANT IN YOUR COUNTRY?**

The first and most important step in determining a consistent approach is the inventory of processing operations and personal data handled by the company. If this exercise is not carried out correctly or completely, it is very difficult to adopt a systematic and quality approach.

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## POLAND

### I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?

Yes, GDPR has been implemented into Polish local law. The GDPR is binding in the wording adopted by EU. However some local regulation had to be changed. The most important Polish regulations are:

1. the Data Protection Act of 10th May 2018 – according to this Act a new Polish data protection authority was established – the President of the Data Protection Office; in this Act the control proceedings and proceedings on liability for non-compliance with the GDPR is also regulated; and
2. the Act of 21st February 2019 on amendments to certain acts in relation to the application of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) – according to this Act provisions in over 160 acts was amended, i.a. in the Polish Labour Code, Bank Law, Act on insurance activities, Act on access to business information and business data exchange, Act on Providing of Electronic Services.

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### II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?

- There are special regulations concerning CCTV in the working place and in Poland there is legislation, which allows to implement also other kinds of control over the employees.
- Labour Law – there are specific regulations concerning data processing of job applicants and employees.

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### III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?

About 60 %

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### IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?

The President of the Data Protection Office  
(Prezes Urzędu Ochrony Danych Osobowych)

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### V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?

In Poland the highest sanction amounted almost 1 mln PLN (equivalent of 220 000 EUR) for not meeting the information duties under the GDPR.



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**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

The fines shall constitute the income of the state budget.

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**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

Other measures taken by the Polish authority has been as follows:

- Ordering to bring processing operations into compliance with the provisions of the GDPR (e.g. by deleting data, by ceasing the data processing) and
- Ordering to communicate of a personal data breach to the data subject.

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**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

The most difficult issues of our clients to comply with GDPR are:

- Identification when a data processing agreement is required;
- What is the scope of data that are allowed to be processed (implementation of the data minimization principle);
- How to fulfill the information obligation and
- What kind of data and on what basis is allowed to be transferred between group of undertakings

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**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

- Data transfer between group of undertakings and
- Storage period concerning personal data of the job applicants

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**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

From our experience, the following factors have the most influence on the process of implementation and maintenance of the GDPR in a company:

- audit of the processes in the company
- introduction of processes and new documentation compliant with GDPR
- regular trainings for employees.

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## SLOVAKIA

### **I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?**

Yes, due to the GDPR a new Data Protection Act was adopted on 30 January 2018 as Act No 18/2018 Collection, which entered into force together with the GDPR on 25 May 2018.

### **II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?**

The most provisions of the new Slovak Data Protection Act duplicate the provisions of the GDPR and directive (EU) No 2016/680

There are however:

- Some extension of exceptions to process personal data without the consent of the data subject, if it is for academic, artistic or literary purposes, or it is necessary for informing the public through mass media and if the personal data is processed by the processor entitled to such business activity;
- Possibilities for the employer to disclose personal data of their employees for the purposes and in connection with the performance of their work, whereby the esteem and dignity of the data subject must not be infringed;
- Specific legal provisions for the processing and publication of the personal identification number; and
- Possibilities to process genetic data, biometric data and health related data if complying with specific legal requirements.

### **III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?**

It is difficult to guess a precise number. According to our experience, large (especially international) companies in Slovakia already fully or mostly comply with GDPR, however, there is still a lack of compliance by small and medium companies and entrepreneurs.

### **IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?**

The Office for Personal Data Protection of the Slovak Republic (“Slovak supervisory authority”)  
<https://dataprotection.gov.sk/uouu/en>



**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

According to the report of the Slovak supervisory authority from September 2018 the highest fine, which was imposed for data protection breaches, was in the amount of EUR 5,000 for the unauthorized disclosure of a generic identifier of a larger number of data subjects.

So far, no fines for non-compliance with GDPR have been imposed from the Slovak supervisory authority.

**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

The administrative fines are recognized as revenue of the Slovak national budget.

**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

The authority may also apply measures listed in Article 58 (2) GDPR/ § 81 (3) of Slovak Data Protection Act i.e. impose a temporary or permanent restraint including a ban on processing etc.

**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

- Clients are required to meet one-month period from request of data subject to controller, who is processing her/his personal data (§ 29 (3) of Slovak Act on data protection).
- To clearly determine the purpose of processing personal data collected through cookies and to prove that a valid consent of data subject was given.
- Usage of cloud solutions according GDPR- provision of the information duty by processing personal data by camera systems.

**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

It is especially not clear how will the national supervisory authorities exercise their enhanced enforcement powers against controllers and processors with regard to the high possible fines for data protection breaches (up to 4% of annual worldwide turnover).



**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

Have a proper documentation that demonstrates compliance with GDPR and with the Slovak Data Protection Act, including but not limited to:

- Description of processing activities and security measures - technical measures (e.g. protection against unauthorized access, rules for network security, back-up of data) and organizational measures (instructions for employees where they were instructed how to process personal data, designation of data protection officer, etc.);
- Contracts between controller and processor/ between joint controllers and selected parts of this disclose to the data subjects;
- Up-dated running contracts in accordance with GDPR;
- Specifications of the legitimate interest if this is the legal basis for the processing of personal data;
- Description of secure identification, authentication and authorization of persons in the information system;
- Risk analysis leading to the security measures being taken in order to protect personal data;
- Documented privacy breaches and take action to avoid repetition; and
- Complying code of conduct/ certificate approved by the Slovak supervisory authority.

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## SPAIN

**I. HAS THE GDPR BEEN IMPLEMENTED INTO LOCAL LAW IN YOUR COUNTRY AND WHAT IS THE NAME OF THIS LOCAL LAW?**

Yes. It has been implemented by the Law “Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales” (LOPDGDD).

**II. WHAT ARE THE MAIN TOPICS IN YOUR LOCAL LAW DEVIATING FROM THE GDPR?**

The object of the Law was basically to adapt our legislation to the RGPD and to regulate the fundamental right to data protection. During its parliamentary procedure, however, it was added as an object to guarantee the digital rights of citizens. In addition, and although it is not expressly foreseen, the new LOPDGDD has as its object a substantial and highly controversial change of the General Electoral Organic Law, which in a new article, the 58.bis, added by the third final provision of the new Law, suddenly allows political parties to collect personal data relating to the political opinions of individuals.

**III. GUESS HOW MANY COMPANIES ALREADY COMPLY WITH GDPR IN YOUR COUNTRY?**

2 out of 3 companies do not comply with the GDPR.

**IV. WHAT IS THE RESPONSIBLE AUTHORITY FOR CONTROLLING GDPR COMPLIANCE?**

Agencia Española de Protección de Dato

**V. WHAT WAS THE HIGHEST SANCTION OF ONE OF YOUR AUTHORITIES?**

Before the regulation came into force, Whatsapp and Facebook, for example, were fined up to EUR 300,000. Now these sanctions can be much higher thanks to the GDPR, up to 4% annual overall turnover of the previous year or EUR 20.000.000.

Nevertheless, in Spain no fine has yet been imposed under the new RGPD. In practice, the fine ranges of the previous legislation would be between 5,000 and 20,000 euros, and could even reach 60,000 in more serious situations.





**VI. WHERE DO THE FINES OF THE GDPR-SANCTIONS GO TO (FOR WHAT PURPOSES WILL THEY BE USED)?**

The AEPD has already explained many times that ex lege this money is destined to finance a good part of the Agency's budget. The AEPD budget is decided by Parliament and the Agency does not have the power to decide freely the destination of the fines. Each expenditure or new staff position must be decided by various public organisations. In other words, although formally the money from the fines finances the Agency, they hardly decided on the matter.

**VII. WHAT OTHER MEASURES HAVE BEEN TAKEN BY THE AUTHORITIES? WHAT IS THEIR POSITION?**

As a non-economic sanctioning measure, the new Spanish LOPD provides the publication in the Official State Gazette of the information that identifies the infringer, the infringement committed, and the amount of the sanction imposed where the sanction is more than one million euros and the infringer is a legal person.

**VIII. WHAT ARE THE MOST DIFFICULT ISSUES OF YOUR CLIENTS TO COMPLY WITH GDPR?**

Without a doubt, the bureaucracy involved in adapting to the new regulations and the general ignorance of this matter are the most important problems they have to face. In Spain there is really no culture of data protection, so to employers, this regulation seems mostly unnecessary.

**IX. WHAT ARE THE MAIN UNSOLVED LEGAL PROBLEMS HIGHLY DISCUSSED IN YOUR COUNTRY?**

The starting point in Spain must be that the culture of compliance in terms of data protection, from the point of view of maturity, is still scarce, especially in small and medium enterprises. This is not the case in large companies in both the commercial and financial spheres, which do have a solvent and rigorous internal protocol. In Spain, privacy in personal data matters comes to the fore in public and judicial circles in very specific cases. To cite the most classic, we would cite as an example the privacy of workers and their data and communications carried out during working hours from devices delivered by the company (is the intervention of communications and its control during this period legal? as well as in the case of minors (< 14 years old) in order to be able to control mobile devices and their social networks even by their parents (which has been resolved in favour of the privacy of minors and in minimising the intervention of minors by their guardians).



**X. FROM YOUR EXPERIENCE, WHAT ARE YOUR RECOMMENDATIONS TO MAKE A COMPANY GDPR-COMPLIANT IN YOUR COUNTRY?**

The culture of GDPR compliance in Spain and in companies must be linked to the need to observe the regulations in this area as vitally important not to be subject to sanctions, but above all to be able to show the general public a culture of regulatory compliance and maturity of the company in developing the controls of compliance in the matter.

Second, but no less important, although the Spanish company is a sidereal distance from seeing this advantage, the implementation of a GDPR compliance culture must also respond to a new way of prospecting the market with its customers, taking advantage of the potential of Big Data, including the possibilities of marketing customer data with due anonymization of them, as a way of additional revenue, depending on the activity and services of the IoT community.

In short, these two pillars are the basis of the new regulation in line with the digitalization and internationalization of economic relations today.

The following points should be ensured through an adequate advisory service:

- Ensure that the information stored is correct.
- Ensure the fulfilment of people's rights.
- Identify which data to keep and which data not to keep.
- Update data security policies and procedures.
- Improve the consent process.
- Implement the figure of the data protection officer.

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