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Evolution of personal data protection – not only GDPR

On 25 May 2018, a new European regulation on personal data protection comes into effect ("GDPR"). There is probably not a single entity on the market that has not heard of the approaching changes.

Data processing (from data collection to removal) will shift to an entirely different, significantly higher, risk level and compliance with data protection regulations will become even more important for controllers and processors (enterprises). So there is even less time for your organisation to carry out a project to implement the GDPR. The changes in this respect should be of interest to businesses in all sectors, particularly in the financial, marketing, HR, FMCG, insurance and power sectors.

The GDPR provides, among other things, for financial sanctions of up to EUR 20 million (or 4% of global turnover) to be imposed and strictly enforced by the supervisory authority (President of the Personal Data Protection Office). Sanctions have definitely become one of the main incentives for companies to interest themselves in the topic of data protection.

Important!

GDPR comes into effect on 25 May 2018 and provides among other things, for financial sanctions to be imposed by the supervisory authority (President of the Personal Data Protection Office)

Many businesses, especially those operating across several EU countries, assume that the GDPR is the only new document regulating data processing. They often overlook the fact that the GDPR is only a fraction of the provisions on data processing that will change after 25 May 2018.

Although the GDPR regulates most issues relating to data processing, work is underway in Poland on a new Personal Data Protection Act, which is aimed at tightening up some GDPR provisions. In March 2017, the Ministry of Digital Affairs, which is overseeing implementation of the GDPR in Poland, published the first bill of the new Personal Data Protection Act. The bill is to replace the current Personal Data Protection Act.

The bill refers at present only to certain GDPR provisions and contains proposals for provisions on, e.g.:

- accreditation and certification
- proceedings over breach of data protection provisions
- European administrative cooperation
- inspection procedures
- administrative fines and civil liability
- data protection inspectors
- age from which children do not require parental or legal guardian's consent

The current bill does not contain all the solutions that will be included in the new Act. The full draft should also implement and regulate issues such as data processing registers, matters relating to reporting data protection breaches and potential criminal liability for data processing.

The bill is not the only new legal instrument aimed at ensuring that the GDPR is properly implemented into the Polish legal system. When the GDPR comes into force, a huge number of acts and other acts of law which regulate data processing in sectors such as banking, financial institutions and telecommunications sectors, will also change.

Adjusting sector provisions is the next challenge facing businesses and the Ministry of Digital Affairs. Sector organisations such as the Polish Bank Association and the Polish Chamber of Information Technology and Telecommunications are participating intensively in legislative work carried on by the Ministry of Digital Affairs in which changes are being prepared to sector provisions on data processing and industry-wide codes of conduct. Work on sector provisions is often not publicised, though the participation of businesses in consultations within a sector organisation may enable them to familiarise themselves with and influence the future shape of regulations.

The changes being drafted by the Ministry of Digital Affairs and sector organisation representatives will be adopted into the legal system in the form of an act, containing changes to adapt sectoral data processing to GDPR requirements. According to the Ministry of Digital Affairs, the bill will be ready in July/August of this year and sector changes will also cover the Labour Code, to which will be introduced, e.g. provisions on protection of employees' biometric data.

All businesses, regardless of sector, should comprehensively prepare for the changes to data protection. We have met with approaches of clients who assume that introducing uniform solutions across all their organisations operating in the EU will suffice to implement GDPR solutions. However, many have not taken into account the differences that could arise from EU sector solutions (e.g. profiling of clients in the banking or insurance sectors).

Important!
All businesses should comprehensively prepare for the changes to data protection.

It should be stressed that, within the current data protection evolution, implementing only GDPR solutions may be insufficient. The quantity and significance of the changes to data protection require businesses to take a broader look at the issue of data protection in their organisations and sectors, and to make suitable preparations for the changes that await them from 25 May 2018. All businesses, particularly those in regulated sectors (e.g. banking, insurance), must also remember to include in the GDPR implementation process changes arising from sector provisions typical of their sector in Poland. Heavy fines for non-compliance with data processing provisions should be sufficient motivation to carry out the GDPR implementation process duly and thoroughly.

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