

## **Newsletter: Note to members**

At our last annual conference in June 2017 it was decided, following representations from members, that we would produce a short newsletter each month and each member could publish an article or ideas for the benefit of other members or comment on other published articles.

The Newsletter facility on our website has now been established and it is my privilege to write the first article for the Newsletter.

The most topical subject at the moment in the business community in Europe is the General Data Protection Regulation (GDPR). I have prepared a short introductory paper on the matter for members. Over the next few months I shall prepare short papers on more specific aspects of the Regulation.

### **The General Data Protection Regulation (GDPR)**

The GDPR is a European Union Regulation that significantly increases the obligations and responsibilities for organisations and businesses in how they collect, use and protect personal data. The GDPR will bring significant changes to current data protection legislation.

It will come into effect automatically across the EU on 25<sup>th</sup> May 2018; no Member State will have to pass a specific law to implement it.

The current EU Data Protection Directive dates back to 1995, when Google did not exist and the internet was in its infancy. Technology has changed and the legal basis for data protection has also changed. The Charter of Fundamental Rights of the European Union establishes that everyone has the right to the protection of their personal data (that is any information about an individual that is compiled and stored - whether computerised or otherwise). For individuals, who are known as “data subjects”, the GDPR improves the protection of existing rights and introduces new rights. The GDPR clarifies what organisations that process personal data must do to safeguard these rights and introduces significant fines for those in breach.

The legislation applies to everybody who holds personal data on data subjects residing in the EU. The GDPR will equally apply to sole traders and multinationals and all are required to be GDPR compliant. Unlike the current legislation, the new regulation allows for administrative fines. For a serious breach of the GDPR the maximum administrative fine is up to 4% of global turnover or €20m – whichever is the higher. For other breaches (e.g. inadequate record keeping or failure to report a breach) Regulators will have the power to issue penalties of up to 2% of global turnover or €10m – whichever is the higher. In addition, data subjects have the right to claim compensation from the data controller or the data processor.

The data controller is the entity that determines the purposes, conditions and the means of the processing of the personal data. Whereas the data processor is the entity which processes the personal data on behalf of the controller.

If the data has been incorrectly held or used and the individual has suffered damages, the offending party is subject to legal action and all sanctions issued by the Regulator will be in the public domain.

## **Public awareness:**

In the business media much attention has focused on the enormity of the possible fines for breaches of the legislation. While such coverage is appropriate, it is noteworthy that, in general, the information commissioners across Europe tend to play down the emphasis on fines and penalties. Elizabeth Denham, the UK's information commissioner, who is in charge of data protection enforcement, says that she is frustrated by the amount of "scaremongering" around the potential impact for business. She adds "it is still an evolution not a revolution". She further says that for businesses and organisations already complying with existing data protection laws, the new Regulation is only "a step change".

## **Is my business going to be impacted by the new Regulation?**

In short – yes. Individuals, organisations and companies that are either "controllers" or "processors" of personal data will be covered by the GDPR. If you are currently subject to the Data Protection legislation it is likely that you will also be subject to the GDPR. Both personal data and sensitive personal data are covered by GDPR.

**Personal data**, a complex category of information, means a piece of information that can be used to identify a person. This can be a name, address, IP address etc.

**Sensitive personal data** includes genetic data, information about religious and political views, sexual orientation, medical / mental health information etc.

These definitions are largely the same as those within the current data protection laws and can relate to information that is collected through automated processes. Where GDPR differs from current data protection laws is that pseudonymised personal data can come within the scope of the new Regulation – if it is possible that a person could be identified by a pseudonym.

## **Effect of the new Regulation:**

It is generally believed that the new data regulation is needed and that it is a positive development. Companies covered by the GDPR will be more accountable for their handling of peoples' personal information. This can involve having data protection policies, data protection impact assessments and having relevant information on how data is processed. The holders of information must ensure that personal data is processed lawfully, transparently and for a specific purpose. Once that purpose is fulfilled and the data is no longer required it should be destroyed.

The GDPR calls for members and associations in particular industries to provide a framework to assist with compliance. In the case of the debt recovery industry FENCA has taken a lead role in moving the establishment a Code of Conduct for the industry.

## **Where can I find further information on GDPR?**

At EU level the Article 29 Working Party oversees the development of data protection rules throughout the EU and publishes opinions and recommendations on various data protection topics. This is a common source of information and indicates how GDPR issues are being viewed by legislators. It also publishes guidelines on specific issues from time to time. For anybody seeking up to date information it is a valuable resource.

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