

GDPR National Legislation Survey

2018



GDPR - National Legislation Survey (January 2018)

Introduction

This year, on 25 May 2018, the EU General Data Protection Regulation (GDPR) will directly apply in all EU Member States. The GDPR contains 50+ so-called opening clauses allowing EU Member States to put national data protection laws in place to supplement the GDPR. This survey provides an overview of the current legislative activities in terms of national data protection laws supplementing the GDPR of 27 of the 28 EU Member States (Cyprus is excluded). We will update this survey regularly throughout the coming twelve months.

Survey questions

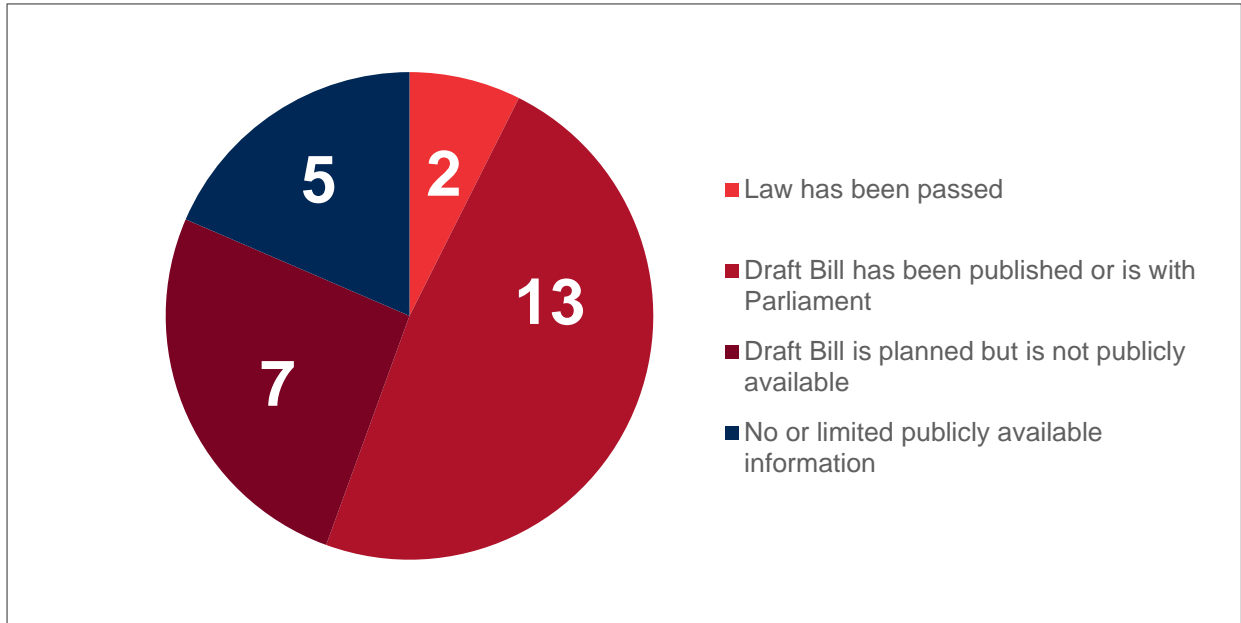
The survey is broken down into three areas:

1. **General Approach** - Have there been any declarations, comments or other communication of government officials, Members of Parliament or any other parties concerned with the relevant legislative processes regarding national data protection laws supplementing the GDPR that indicate how your jurisdiction intends to deal with:
 - (a) its existing data protection laws in view of the GDPR?
 - (b) the GDPR's opening clauses?
2. **Legislative Steps** - Have there been any legislative efforts (discussion papers, ministerial draft bills, drafts introduced by political parties, associations, lobby groups, etc.) to amend/abolish existing data protection laws and/or to introduce new national data protection laws supplementing the GDPR? If yes, what subject matters are covered by those laws? What is the rationale behind the amendment/abolishment/introduction of such laws? Could you please provide the relevant draft bills, etc. and links to such documents, if any.
3. **Key Legal Debates** - What are the most intensely debated issues in respect of the GDPR in your jurisdiction? Are there any indications on how the national legislature plans to deal with those issues (e.g. establishing more/less strict rules in specific areas)?



Findings

Overview over the 27 countries in scope:



- Two countries have passed Acts which will come into force from 25 May 2018: **Austria** and **Germany**.
- Thirteen countries have published a Bill, including a Bill that is sitting with Parliament: **Czech Republic, Denmark, France, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain** and **The United Kingdom**.
- Seven countries are planning to draft a Bill which has not yet been made public: **Belgium, Croatia, Estonia, Finland, Ireland, Italy** and **Sweden**.
- Five countries have not published a Bill or have limited publicly available information on how they will implement the GDPR: **Bulgaria, Greece, Malta, Portugal** and **Romania**.

Data Protection Officers

The following is a brief summary of the use of the GDPR's opening clause on Data Protection Officers (DPO). The circumstances in which a country may trigger an obligation to appoint a DPO vary from country to country and are case-specific.

- So far, only **Germany** has passed a law which retains the threshold and criteria from previous laws on the appointment of a Data Protection Officer
- The following countries have draft Bills which contain specific provisions relating to DPOs: **France, Latvia, Luxembourg, Poland, Slovenia, Spain** and **The United Kingdom**. At this point, however, it seems like only the national laws of **France, Luxembourg, and Spain** will provide for circumstances which trigger an obligation for private entities to appoint a DPO beyond those in the GDPR.

Baker McKenzie will continue monitoring the progress of all GDPR developments. As there may have been developments since the publication of this survey, please contact the Global Privacy Team of Baker McKenzie or the local contributors for the most up-to-date state of play.

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Question 1 - General Approach

Have there been any declarations, comments or other communication of government officials, Members of Parliament or any other parties concerned with the relevant legislative processes regarding national data protection laws supplementing the GDPR that indicate how your jurisdiction intends to deal with:

- (a) its existing data protection laws in view of the GDPR?
- (b) the GDPR's opening clauses?

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| Austria | <p>The Austrian Data Protection Act 2018 (DPA 2018) has been passed by the Austrian Parliament and will enter into force on 25 May 2018. It will amend the current Austrian Data Protection Act 2000 (DPA 2000).</p> <p>The DPA 2018 has a minimalistic approach regarding the use of opening clauses and generally implements only mandatory opening clauses.</p> |
| Belgium | <p>We are not aware of any documents, i.e. draft bills, that have been published in respect of amending or abolishing existing Belgian data protection laws. We, however, understand that a draft bill amending or replacing the current Data Protection Act would be currently discussed at ministerial level.</p> <p>In addition, the Belgian Data Protection Authority (the Belgian Privacy Commission) recently published an opinion on a draft bill that will specifically implement Article 54 of the GDPR (establishing the supervisory authority and amending the current Belgian Privacy Commission).</p> |
| Bulgaria | <p>No. There is not any official opinion or guidelines of the Bulgarian DPA (and government officials, members of parliament or any other parties) with respect to the existing data protection laws in view of the GDPR.</p> <p>We are not aware of any declarations, comments or other communication with respect to GDPR's opening clauses.</p> |
| Croatia | <p>According to the Government's Normative Actions Plan for 2017, the Croatian Government was expected to propose the draft Act on Implementation of GDPR in the third quarter of 2017. This deadline has passed without any draft Act being proposed or anything being made publicly available. According to the unofficial information from the Croatian Data Protection Authority (DPA), the new Act is currently being drafted by the working group and is to revise the provisions of the current Personal Data Protection Act which are incompatible with GDPR. It is, however, unknown when the new Act will be proposed to Parliament and what measures will be imposed by the new Act.</p> <p>Unofficial sources also comment that (unlike the current legislation) the new Act will grant power to Croatian DPA to directly impose administrative fines to sanction non-compliance, but at the moment, there is still no official information available as to what the approach towards the GDPR's opening clauses will be.</p> |
| Czech Republic | <p>The Czech Ministry of the Interior, in cooperation with the Office for Personal Data Protection (DPA), has proposed a draft of a new Act on Personal Data Processing (Act) and other related amendment laws which reflect the GDPR. The draft of the Act has been approved by the Government and is expected to be discussed by the Chamber of Deputies.</p> <p>Following the standard legislative procedure, the proposed date of implementation is 25 May 2018. Furthermore, due to the recent parliamentary elections in the Czech Republic, the expected adoption of the Act within the legislative procedure might be postponed as the new Parliament is still in the process of being</p> |

established.

With respect to the opening clauses, the new draft Act does not go beyond the provisions of the GDPR, however, in connection with the authorization given to the national legislators, provides certain derogations and clarifications. The following important areas are worth mentioning:

- With respect to particularly important cases of processing of personal data in the public interest, the possibility of further processing without the requirement of reviewing the compatibility of the purpose of the original and subsequent data processing is established;
- reduction of age limit for granting of online consent to data processing to 13 years;
- in cases where a data controller carries out processing of personal data necessary to fulfil its legal obligation or a task carried out in the public interest or within the exercise of its authority, such controller may inform Data Subjects of the processing by disclosing the information in a manner allowing remote access;
- introduction of a possibility of the data controller to inform the recipients to whom personal data has been made available of any corrections, limitations or deletions of such personal data also by means of change of the respective personal data in the records, provided that valid contents of such records are regularly made available to the recipient;
- exception to the obligation to carry out data protection impact assessment where certain data processing is regulated by specific legal regulations;
- limitation of data controllers' obligations as set out in Articles 12-22 GDPR, and also establishment of the possibility of data controller to limit or postpone notification of a personal data breach to the regulatory authorities in cases of: (i) defence or security of the Czech Republic; (ii) public order or internal security; (iii) prevention, search for or detection of criminal activities, prosecution of criminal offences or enforcement of criminal penalties; (iv) another important public interest objective of the European Union or Member State, in particular an important economic or financial interest of the European Union or Member State, including monetary, budgetary and fiscal matters, public health and social security; (v) protection of the independence of the judiciary and of judicial proceedings, or (vi) monitoring, inspection or regulatory functions related, even occasionally, to the exercise of official authority in the cases referred to in points (i) to (v).

Please note that since such proposed draft law has not yet been approved by the Czech legislative bodies, it is subject to possible amendments and its wording should be deemed neither final nor binding at this stage.

Denmark

On 24 May 2017 the Danish Ministry of Justice proposed the first official Danish interpretation by publishing a 1264 page report¹ about the GDPR in a Danish context.² The report provides the basis for the upcoming work in relation to the Danish bill and discusses numerous topics regarding the current and upcoming data protection legislation.

Furthermore, on 7 July 2017 the Ministry of Justice published a draft bill for consultation regarding the new Danish Data Protection Act. The draft bill contains proposals for the implementing of the GDPR opening clauses. The Ministry has e.g. proposed that the current rules regarding social security numbers, existing requirements of the disclosure of personal data for marketing purposes and current rules regarding credit rating agencies are upheld. The Ministry has also proposed that the age limit regarding when children are allowed independently to give consent to the processing of their personal data in connection with the supplying of

¹ <http://justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2017/nye-regler-styrker-beskyttelsen-af-persondata-i-europa>

² <http://jm.schultzboghandel.dk/publikationer/publikationsdetaljer.aspx?Pid=d4caa501-e175-4859-945e-74fe990460f2>

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| | <p>information services is lowered from 15 years to 13 years.</p> <p>The draft bill also specifically states that the processing of employee personal data can take place based on consent, which is controversial in the light of the Article 29 Working Party's opinion (2/2017 WP 249), where they state that consent is highly unlikely to be a legal basis for data processing in an employment context, unless employees can refuse without adverse consequence.³</p> |
| Estonia | <p>The Estonian Data Protection Inspectorate drafted an overview of the status of implementation of the GDPR in Estonia on 14th October 2016 by which the Estonian Data Protection Inspectorate gave its recommendations on how the GDPR should be implemented in Estonia.⁴ The Estonian Ministry of Justice has published a document titled "<i>The New Legal Framework for the Protection of Personal Data</i>".⁵ This document describes possible legal solutions, but not any fixed legal solutions.</p> <p>The Inspectorate also publishes, on an ongoing basis, guidance materials and instructions regarding the GDPR requirements (only available in Estonian).⁶ Materials published so far cover the following topics: 1) when is the appointment of a data protection officer required; 2) tasks, knowledge and skills required for data protection officers; 3) what is the right to data portability?; 4) breach notifications; 5) registration of processing activities; 6) data protection by design and by default; 7) checklist for consent requirements; and 8) checklist for the requirements of data protection impact assessment.</p> <p>There have not yet been any public declarations, comments or communication from Estonian legislative bodies that would indicate how Estonia intends to deal with existing data protection laws in light of the GDPR or with the GDPR's opening clauses. The Estonian Ministry of Justice is currently preparing the draft implementing Act.</p> |
| Finland | <p>On February 17, 2016 the Ministry of Justice ("MoJ") set up a working group, consisting of representatives from all government departments and some representatives of private sector organizations, with the primary responsibility for the implementation of the GDPR in Finland. One of the main tasks of the working group was to review the current Finnish Personal Data Act (523/1999) ("PDA"), implementing Directive 95/46/EC, in the light of the GDPR and to determine whether such the Act is still needed as well as whether and how the GDPR opening clauses should be implemented into national legislation.</p> <p>The MoJ working group finished its work at the end of May 2017. On 21 June 2017, the Ministry of Justice published a committee report based on the work of the working group proposing that the PDA currently in force shall be repealed and a new Finnish Data Protection Act implementing national legislation making use of the GDPR's opening clauses shall be adopted. The committee report included a proposal for a government bill on the Finnish Data Protection Act.</p> <p>For specifics of the content of the committee report, please see the answer to question 2.</p> |
| France | <p>The French Government has created a taskforce, led by the Ministry of Justice, to analyse the consequences of the GDPR and to reshape the existing French Data Protection Act ("FDPA"), according to a report published on 22 February 2017. It highlights some concerns regarding the cooperation procedures between the</p> |

³ [http://prodstoragehoeringspo.blob.core.windows.net/a81f6ce8-956b-4f4b-9d94-44411f0e615f/Forslag%20til%20lov%20om%20supplerende%20bestemmelser%20til%20forordning%20om%20beskyttelse%20af%20af%20personer%20i%20forbindelse%20med%20behandling%20af%20personoplysninger%20og%20om%20fri%20udveksling%20af%20s%C3%A5danne%20oplysninger%20\(databeskyttelseslo%20\[DOK2365818\].pdf](http://prodstoragehoeringspo.blob.core.windows.net/a81f6ce8-956b-4f4b-9d94-44411f0e615f/Forslag%20til%20lov%20om%20supplerende%20bestemmelser%20til%20forordning%20om%20beskyttelse%20af%20af%20personer%20i%20forbindelse%20med%20behandling%20af%20personoplysninger%20og%20om%20fri%20udveksling%20af%20s%C3%A5danne%20oplysninger%20(databeskyttelseslo%20[DOK2365818].pdf)

⁴ http://www.aki.ee/sites/www.aki.ee/files/elfinder/article_files/ylevaade_reformist_14102016.pdf.

⁵ <http://eelnoud.valitsus.ee>

⁶ <http://www.aki.ee/et/eraelu-kaitse/euroopa-andmekaitse-reform>

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| | <p>European Data Protection Authorities on sanctions, in particular the figure of the penalties. They will follow the Art. 29 Working Party guidelines and national provisions. Generally speaking, the report emphasised that: "<i>Several concepts referred to in the Regulation will have to be clarified by the Art. 29 Working Party in order to allow a uniform application of the Regulation among the Member States of the European Union.</i>"</p> <p>A Data Protection Bill was published by the French government on 13 December 2017. This Bill enables the practical implementation of the GDPR by updating the current Data Protection Act of 6 January 1978. However, the Bill still needs to be discussed in Parliament, which will take a few months before final adoption. Various amendments are also expected.</p> <p>The Data Protection Bill potentially makes extensive use of opening clauses to maintain a more restrictive application of the GDPR obligations and to essentially retain control over sensitive data. For example, the Data Protection Bill maintains a system of prior authorisation for the processing of most sensitive data - e.g. biometric data necessary for the identification will be subject to CNIL's prior authorisation.</p> |
| <p>Germany</p> | <p>Germany enacted a law to: (1) revise the existing Federal Data Protection Act; and (2) introduce a new national data protection law supplementing the GDPR. For further details on the content of the new law, see our response to question 2.</p> <p>As concerns guidance, there is some rather high-level information on the GDPR available, for instance, from the Federal Commissioner for Data Protection and Freedom of Information⁷ as well as more specific guidance issued by the state data protection authorities (DPAs).</p> <p>As an example, the Bavarian DPA regularly releases guidance notes on selected GDPR topics (such as the appointment of data protection officers, the one-stop-shop, CCTV under the GDPR, the right to be forgotten, security breaches, data protection impact assessments, codes of conduct, access rights, consent provided by children and international data transfers).⁸ Furthermore, the Bavarian DPA published an outline of the legal framework for data protection in the employment context in which it also comments on the new national data protection law supplementing the GDPR.⁹</p> <p>The joint body of the 16 German state data protection authorities ("<i>Düsseldorfer Kreis</i>") commented in September 2016 on the validity of consent under the GDPR.¹⁰ According to this guidance, consent legally obtained under existing German data protection laws shall remain valid under the GDPR in accordance with Recital 171. However, the <i>Düsseldorfer Kreis</i> stressed that consent would need to be in line with the requirement of it being voluntary as well as in line with the national minimum age requirement (16 except as stated otherwise by national law) in order to enjoy validity under the GDPR.</p> |
| <p>Greece</p> | <p>There have not been any declarations about Greece's existing data protection laws in light of the GDPR.</p> <p>There is, however, a legislative committee looking at opening clauses. Unofficial sources are saying that the work of the committee has fallen behind schedule. They also confirmed that focus has been placed on processing in an employment context and also on the processing of data for scientific/statistical purposes.</p> |

⁷ <https://www.bfdi.bund.de/SharedDocs/Publikationen/Faltblaetter/Datenschutzgrundverordnung.html?nn=5217040>.

⁸ https://www.lida.bayern.de/en/privacy_eu.html (English version website with documents available only in German).

⁹ https://www.lida.bayern.de/media/baylda_ds-gvo_20_employment.pdf.

¹⁰ <https://www.bfdi.bund.de/SharedDocs/Publikationen/Entschliessungssammlung/DuesseldorferKreis/FortgeltungBisherErteilterEinwilligungen.html?nn=5217016>.

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| <p>Hungary</p> | <p>In January 2017, the Hungarian DPA proposed that the Ministry of Justice set up a common expert working group to discuss legislative steps relating to the GDPR. The Hungarian DPA has actively supported the Hungarian Ministry of Justice in preparing the first draft of the Hungarian GDPR Implementation Act, which was published by the Ministry in August 2017 for public consultation.</p> <p>Neither the Ministry nor the Hungarian DPA has made any comments regarding GDPR Implementation prior to the publication of the draft GDPR Implementation Act.</p> |
| <p>Ireland</p> | <p>The Irish government has published the General Scheme of a new Data Protection Bill but the finalised Data Protection Bill itself has not yet been published. Parliamentary scrutiny of the Data Protection Bill was completed in July 2017. The Data Protection Bill will: (a) give effect to certain derogations and enabling measures required under the GDPR; (b) implement the Law Enforcement Directive; and (c) put in place the administrative machinery required for the Data Protection Commission (the proposed new name for the Irish supervisory authority) to exercise its powers under the GDPR/Law Enforcement Directive.</p> <p>The Data Protection Bill is targeted for enactment prior to the date on which the GDPR comes into force. It is anticipated that, through the combination of the GDPR and the proposed Data Protection Bill, the existing Data Protection Acts 1988 and 2003 will be repealed, however this matter is still under consideration by the Department of Justice and Equality. We are not aware of any specific comments relating to the GDPR's opening clauses.</p> |
| <p>Italy</p> | <p>The general approach for the implementation of the GDPR reveals the intention to maintain the existing structure of the Italian Privacy Code, currently in place, and adapt it to the provisions of the GDPR. Indeed the Italian Parliament approved a Law (Law n. 163 in October 2017) delegating the Government to adopt one or more Legislative Decrees for the implementation of the GDPR within the following six months (starting from November 2017). This Law gives the Government the authority to modify the Italian Privacy Code (Legislative Decree n. 196/2003), coordinating its text with the GDPR and providing, where appropriate, implementing and integrative measures. The Legislative Decrees have not yet been published.</p> |
| <p>Latvia</p> | <p>On 12 October 2017 the Ministry of Justice published the new draft "Personal Data Processing Law". It has been introduced only in the first stage of the legislative process - the Meeting of State Secretaries and has been sent to various state bodies for review. Afterwards it will be reviewed by the Cabinet of Ministers and eventually will have to be approved in 3 hearings by the Parliament. Consequently, it is planned that on 25 May 2018 the previous national data protection law will be abolished.</p> <p>Currently the legislators have tried to keep within the limits of the GDPR as much as possible and the draft "Personal Data Processing Law" does not provide for many derogations from the rules established under the GDPR (please see further under Question 2). However, giving that this draft has not yet been approved by the Parliament, it is still be subject to change.</p> |
| <p>Lithuania</p> | <p>The Ministry of Justice of the Republic of Lithuania has prepared and submitted the draft of the Law on Legal Protection of Personal Data for the relevant institutions and public consideration. The draft of the Law mostly points to the requirements of the GDPR and only sets forth some specific requirements for:</p> <ol style="list-style-type: none"> 1. Processing of national identification numbers (as provided under Article 87 GDPR); and 2. Processing of personal data in the context of employment (as provided under Article 88 GDPR). <p>The draft also details the competence of the local Data Protection Authority as well</p> |

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| | <p>as its powers, tasks and procedure for imposing a fine.</p> <p>Please note that the draft of the Law may change subject to the results of the consultation and other legislative initiatives which may follow, thus the announced draft is most probably not the final wording of the Law.</p> <p>The Inspectorate will also submit proposals to amend two Resolutions for the Government of the Republic of Lithuania:</p> <ol style="list-style-type: none"> 1. Resolution of the Government (20 February 2002, No. 262) Regarding the Reorganisation of the State Register of Personal Data Controllers, Approval of its Regulations and of the Procedure of Notification by the Personal Data Controllers of the Processing of Personal Data; 2. Resolution of the Government (25 September 2001, No. 1156) Regarding the structural reform of the State Data Protection Inspectorate, providing authorisation, approval of the State Data Protection Inspectorate's regulation and partial amendment of related resolutions of the Government. <p>The Inspectorate will prepare and approve the following projects on the orders of the Inspectorate's director:</p> <ol style="list-style-type: none"> 1. Confirmation of the notification about data breach rules; 2. Confirmation of the list of processing operations which are subject to a data protection impact assessment; 3. Confirmation of accreditation criteria; 4. Confirmation of the certification criteria; 5. Confirmation of the accreditation criteria of the certification offices; and 6. Confirmation of the standard data protection conditions. <p>Other legislation will be drafted, amended or repealed as needed. No further information relating to opening clauses is available.</p> |
| Luxembourg | <p>The Luxembourg Government and the National Commission for Data Protection (CNPD) confirmed that the GDPR will fully apply in Luxembourg law. Thus, the already existing 2002 Luxembourg Data Protection Act will be amended. A new bill, called the Project Bill, was approved which concerns data collection and surveillance. A further Bill establishing the National Commission for Data Protection and implementing the GDPR was published in September 2017. More details on these Bills can be found in Question 2.</p> |
| Malta | <p>No official communication has been issued to date.</p> |
| Netherlands | <p>On 9 December 2016, the Dutch government published a draft bill proposing a Dutch GDPR Implementation Act (<i>Uitvoeringswet Algemene Verordening Gegevensbescherming</i>) on the official government website. The Dutch GDPR Implementation Act (Implementation Act) is a ministerial draft bill and was open for consultation until January 2017. The consultation round resulted in 67 responses (NB: online consultation rounds are open to the public), including a contribution by Baker McKenzie. The Implementation Act seeks to implement the GDPR as of 25 May 2018. Following the request of the State Secretary for Security and Justice, in April 2017 the Dutch Data Protection Authority advised on the draft bill. In short, the advice of the Dutch DPA is as follows:</p> <ol style="list-style-type: none"> (i) To strengthen the independent position of the Dutch DPA as a supervising authority, e.g. by making it possible for the Dutch DPA to conduct legal proceedings at the European courts in its own name; (ii) The Dutch DPA further advises to exercise restraint in the Implementation Act as regards the interpretation of the standards laid down in the GDPR; (iii) The Dutch DPA proposes a policy-neutral implementation of the opening clauses of the GDPR in national legislation. |

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| | <p>With regard to existing Dutch data protection laws in view of the GDPR, the draft bill aims to replace the current Dutch Personal Data Protection Act. A final legislative proposal has not been published since the consultation.</p> <p>The Netherlands intends to deal with the GDPR's opening clauses in the draft bill. With regard to the opening clauses, it is stated on the government website that when implementing European regulations (in general), the starting point is "policy neutrality". This means that current national law will be maintained, insofar as this is possible in light of the specific regulation.</p> |
| Poland | <p>Poland is currently in the process of amending its privacy laws in order to align them with the GDPR requirements. In September 2017, the Ministry of Digitization published a draft of the new Personal Data Protection Act ("PDPA") together with an Act on Introducing the PDPA for public consultation. The public consultation is already finished and now all stakeholders are awaiting the Ministry's response to comments and proposals made during the consultation. Therefore, a final version of the new legislation is still unknown.</p> |
| Portugal | <p>In August 2017, the Ministry of Presidency and Administrative Modernization set up a working group with the purpose of preparing Portuguese legislation for the application of the GDPR.</p> <p>This Working Group is responsible for:</p> <ul style="list-style-type: none"> (a) Conducting a public consultation, namely on the GDPR's opening clauses; (b) Identifying the security rules in the processing of personal data, resulting from the GDPR, and presenting the different alternatives on the institutional architecture necessary for the operationalization of the GDPR; (c) Presenting a draft law proposal; (d) Assessing, together with other entities, the best option to ensure the training of Public Administration officials on the GDPR. <p>For the purposes of drafting the legislation referred to hereabove, the Working Group shall work with the relevant departments of the Portuguese Government and Public Administration.</p> |
| Romania | <p>According to publicly available sources, no such declarations/comments/communications have been made by those involved in the legislative process.</p> |
| Slovakia | <p>The Slovak Office for Personal Data Protection (DPA) has published a draft bill on a new Act on Personal Data Protection (Act). The DPA intends to completely discard the current Data Protection Act and substitute it with the above mentioned Act to better reflect the GDPR and the Directive 2016/680. The draft of the Act is currently being negotiated by the National Council of the Slovak Republic.</p> <p>With respect to the opening clauses, the new draft Act establishes the following main derogations or clarifications with respect to the GDPR:</p> <ul style="list-style-type: none"> ▪ provision of the explicit possibility of a data controller as an employer to provide or disclose personal data of its employees in the extent of: (i) title; (ii) name and surname; (iii) employment, service or functional classification; (iv) personal or employee number; (v) professional formation; (vi) place of work; (vii) telephone number; (viii) fax number; (ix) work e-mail address; and (x) identification data of the employer, if such information is necessary in connection with performance of employment, service or function obligations of the data subject. The provision or disclosure of personal data in such a case must not interfere with the seriousness, dignity and safety of the data subject; ▪ for the purpose of identification of a natural person, an authorization to use personal identification number of such person is established, under the condition that such use is necessary to achieve the intended purpose of the |

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| | <p>processing;</p> <ul style="list-style-type: none"> ▪ enabling of processing of genetic, biometric and health data on the legal basis of a specific legal regulation or an international treaty to which the Slovak Republic is bound; ▪ anchoring an exception of processing of personal data provided by persons other than a data subject from the requirement of obtaining consent of the concerned data subjects if the personal data is disclosed by such other party only for the purpose of: (i) protection of its rights or legally protected interests; (ii) notification of facts justifying application of the legal responsibility of the data subject; (iii) where processing of personal data is required under the specific legal regulation or an international treaty to which the Slovak Republic is bound; or (iv) where processing of personal data is necessary for performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller; ▪ establishing the authorization of a person close to the deceased person to grant consent to data processing of the deceased person's personal data; ▪ enabling the processing of personal data within criminal proceedings also for other purposes without the required consent of data subjects if such processing for other purposes is compatible with the purpose for which personal data was originally collected and if the processing is necessary and proportionate for such other purposes; ▪ limitation of data controllers' obligations as set out in Articles 12-22 and Article 5 GDPR, and also the establishment of the possibility of a data controller to limit or postpone notification of a personal data breach to the regulatory authorities in cases of: (i) defence or security of the Slovak Republic; (ii) public order; (iii) fulfilling tasks for purposes of criminal proceedings; (iv) another important public interest objective of the European Union or the Slovak Republic, in particular important economic or financial interest of the European Union or Slovak Republic, including monetary, budgetary and fiscal matters, public health and social security; (v) preventing violations of ethics in regulated professions and regulated professional activities; (vi) monitoring, inspection or regulatory functions related, even occasionally, to the exercise of official authority in the cases referred to in points (i) to (v); (vii) protection of the independence of the judiciary system and of judicial proceedings; (viii) protection of data subject or rights and freedoms of others; (ix) enforcement of legal claims; or (x) economic mobilization. <p>Please note that since the draft Act has not yet been approved by the Slovak legislative bodies, it is subject to possible amendments and its wording should be deemed neither final nor binding at this stage.</p> |
| Slovenia | <p>The Ministry of Justice held a public consultation for the new Personal Data Protection Act between October and November 2017.¹¹ The new Personal Data Protection Act shall entirely replace its predecessor and implement into Slovenian law the Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.</p> <p>According to the foreword of the draft new Personal Data Protection Act the main purpose of the new Act is to ensure a high level of data protection and alignment of the national law with the new data protection regime under the GDPR. The Information Commissioner has not yet made an official statement regarding the</p> |

¹¹ The draft bill is available at: http://www.mp.gov.si/zakonodaja_in_dokumenti/predpisi_v_pripravi/

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| | <p>draft Personal Data Protection Act. On its webpage, the Information Commissioner expressed a hope that the new Act is adopted in early 2018.¹²</p> |
| Spain | <p>In June 2017, the Ministry of Justice published the Personal Data Protection Bill and its amended version was published last November. According to Spanish legislative procedure, the only lacking step is the discussion of the text in the Parliament and its subsequent adoption. Details around the Bill can be found in our answer to Question 2.</p> <p>To date, the wording of the Bill follows the guidelines previously published by the Spanish Data Protection Agency (SDPA) regarding the duty of information towards data subjects, the drafting of contracts between data controllers and data processors and anonymization.</p> <p>Apart from that and before the publication of the Bill, the SDPA published a Report answering several questions about the legitimate interest as a legal basis for personal data processing. The SDPA used to follow a strict interpretation of this concept, only applying the legitimate interest exception in some circumstances and on a case-by-case basis. This Report is relevant because the SDPA shows a different interpretation criteria, stating several situations in which personal data processing could be based on the data controller's legitimate interests. This change may reflect the future SPDA's new stance for the application of the Personal Data Protection Bill.</p> |
| Sweden | <p>The government's view is that the current Swedish Personal Data Act (PDA), based on Directive 95/46/EC and the Swedish Data Inspection Board's regulations issued under the PDA, will have to be repealed and replaced by the GDPR and that supplemental national law is required.</p> <p>The government has appointed several committees which are tasked with investigating the necessary national adaptations and supplements to the GDPR. A committee report was released 12 May 2017 containing a proposal for a new Swedish Data Protection Act supplementing the GDPR. Two additional reports were issued in June 2017, covering proposals for processing of personal data within the education sector, research sector and via camera surveillance. For further details on the content of the proposal, see our response to question 2.</p> |
| UK | <p>With the GDPR taking effect from 25 May 2018, an important question for the United Kingdom is the GDPR's application following the vote to leave the European Union. As the GDPR takes effect before the UK has left the EU, a key question for the UK is how EU legislation will be implemented post-Brexit. In September 2017, the UK Government introduced a Data Protection Bill¹³ against the dual backdrop of Brexit and the GDPR. Details and considerations around the Bill can be found in the answer to Question 2.</p> <p>In July 2017 the House of Lords EU Committee issued a report on "Brexit: the EU Data Protection Package" where it:</p> <ul style="list-style-type: none"> (i) urged the Government to issue a plan on how it will tackle the issue of data flows with the EU in practice; (ii) recommended that this plan should prioritise seeking an adequacy decision from the EU Commission (in relation to data transfers from the EU) as the optimal solution to ensure that data transfers between the UK and EU remain truly free and unhindered; (iii) urged the Government to ensure that any transitional arrangements agreed during the withdrawal negotiations provide for continuity of data sharing |

¹² The webpage is accessible here: <https://www.ip-rs.si/zakonodaja/reforma-evropskega-zakonodajnega-okvira-za-varstvo-osebni-podatkov/najpogostejša-vprasanja-in-odgovori/>

¹³ Data Protection Bill [HL] 2017-19, available at < <https://services.parliament.uk/bills/2017-19/dataprotection.html>>

with the EU, pending the adoption of adequacy decisions in respect of the UK; and

- (iv) urged the Government to secure a continuing role for the ICO on the European Data Protection Board.

The House of Lords EU Committee's message to the Government is aligned to the ICO's International Strategy 2017-2021, published in July 2017, where the ICO emphasises the importance of (i) ensuring data flows with the rest of the EU after Brexit, and (ii) ensuring the ICO can preserve a position or a voice among the other EU data protection authorities after Brexit.

The ICO has issued a guide titled "Preparing for the General Data Protection Regulations (GDPR): 12 steps to take now" and continues to provide consultation documents on GDPR topics through updating its "Overview of the GDPR" which is a living document meant to be expanded over time. The current Data Protection Act 1998 will be replaced by the GDPR and any national legislation supplementing the GDPR. The ICO has commented that the data protection principles set out in the GDPR are similar to those in the Data Protection Act, but that the GDPR adds a certain degree of detail and a new accountability mechanism. For example, the ICO has said that the UK will need to refresh its approach to consent as the GDPR is more prescriptive.

Question 2 - Legislative Steps


Have there been any legislative efforts (discussion papers, ministerial draft bills, drafts introduced by political parties, associations, lobby groups, etc.) to amend/abolish existing data protections laws and/or to introduce new laws in light of the GDPR?

If yes, what subject matters are covered by those laws? What is the rationale behind the amendment/abolishment/introduction of such laws?

Could you please provide the relevant draft bills, etc. and links to such documents, if any.

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| <p>Austria</p> | <p>The DPA 2018 has been passed by the Austrian Parliament, amending the existing DPA 2000 in order to implement the GDPR and its mandatory opening clauses. The DPA 2018 has been promulgated in Austria's Federal Law Gazette and will enter into force on 25 May 2018.¹⁴</p> <p>The most important subject matters covered by the DPA 2018 are:</p> <ul style="list-style-type: none"> (i) The processing of the personal data of a child on the basis that the child's consent is lawful where the child is at least 14 years old (§ 4 para 4 DPA 2018); (ii) The DPA 2018 does not provide any protection for data relating to legal persons – however, the constitutional right to data protection under § 1 DPA 2000 remains unchanged and will continue to protect data relating to legal persons (but no fines will exist for any violation of this constitutional right); and (iii) The processing of personal data relating to criminal convictions and offences or related security measures is authorised according to § 4 para 3 DPA 2018 subject to a prevailing legitimate interest of the controller. <p>The rationale behind the DPA 2018 is to make as few changes as possible to the DPA 2000 and to generally only implement mandatory opening clauses.</p> |
| <p>Belgium</p> | <p>The Belgian Data Protection Authority (the Belgian Privacy Commission) is quite active regarding the GDPR and dedicated a new section on its website for the GDPR, which includes (i) practical guidance in 13 steps for businesses to prepare for the GDPR, (ii) FAQs in relation to certain aspects of the GDPR, (iii) a draft recommendation on data protection impact assessments, including a public consultation, (iv) a recommendation on the records of processing activities, etc.</p> <p>We are not aware of any indication from the Belgian legislator in respect of dealing with the above issues (other than the draft bills mentioned under Question 1, that are not publicly available yet).</p> |
| <p>Bulgaria</p> | <p>In view of the current political status in Bulgaria and the upcoming elections for Members of the Parliament, there have not been any legislative efforts.</p> |
| <p>Croatia</p> | <p>According to the unofficial information from Croatian DPA, the new Act (to revise the provisions of the current Personal Data Protection Act which are incompatible with GDPR) is currently being drafted by the working group, but no draft is publicly available.</p> |
| <p>Czech Republic</p> | <p>Currently, the draft of the Act is publicly available, together with amending legislation.</p> <p>The primary rationale behind the draft of the new Act is the adaptation of the GDPR and the transposition of the Directive 2016/680, as well as the amendment of the</p> |

¹⁴ https://www.parlament.gv.at/PAKT/VHG/XXV/II/II_01761/fnameorig_643605.html

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| | <p>competencies and the organization of the DPA.</p> <p>The draft of the Act covers the following subject-matters: Derogations and specifications with respect to the GDPR, regulation of protection of personal data in processing related particularly to criminal proceedings and prevention of criminal activities and in relation to ensuring defence and security of the Czech Republic, the role and the organisation of the DPA and the enumeration of the offences and the corresponding sanctions.</p> <div data-bbox="523 443 584 506" style="text-align: center;">  </div> <p style="text-align: center;">Draft Bill Czech Republic</p> |
| <p>Denmark</p> | <p>In October 2017, the Danish Ministry of Justice proposed a Data Protection Bill. The Bill is intended to (i) replace the current Danish Data Protection Act, and (ii) supplement the GDPR by including certain derogations and options from the GDPR which are left to the authority of individual EU member states.</p> <p>Key discussion points from the hearing have been included in the proposal:</p> <ul style="list-style-type: none"> (i) The current rules regarding social security numbers, existing requirements of the disclosure of personal data for marketing purposes and current rules regarding credit rating agencies are upheld. (ii) The age limit regarding when children are allowed independently to give consent to the processing of their personal data in connection with the supplying of information services is set to 13 years. (iii) The bill specifically states that the processing of employee personal data can take place based on consent. <p>The Bill is currently going through the parliamentary process.</p> |
| <p>Estonia</p> | <p>There have been no legislative efforts to amend/abolish data protection laws and/or to introduce new laws in light of the GDPR, except from Estonian Data Protection Inspectorate who has published recommendations on how GDPR should be implemented in Estonia.¹⁵</p> |
| <p>Finland</p> | <p>To the extent possible and appropriate, the Ministry of Justice's working group has retained the current Finnish Personal Data Act as the starting point of the proposed Data Protection Act and some of the provisions currently in force have been retained as is, such as the provision on processing personal identification numbers.</p> <p>Key proposals of the report (only available in Finnish)¹⁶ include:</p> <ul style="list-style-type: none"> (i) The provisions of the proposed Act, as well as mutatis mutandis of the GDPR, shall apply to the processing of personal data in Finland in the course of activity which falls outside the scope of Union law and to the processing of personal data carried out by Finnish authorities when implementing the activities covered by Chapter 2 of Title V of the TEU. However, should there be any legislation providing otherwise, the proposed Act and the GDPR shall not be applied. (ii) Due to the fact that the current Personal Data Act provides for a more detailed legal basis for the processing of personal data than the GDPR, it is proposed that the legal basis for the processing of personal data in certain situations be supplemented by the proposed Act. An example is an insurance company's right to process personal data and special categories of data collected in the course of its insurance activities and relating to the state of health, illness or handicap of the policyholder/claimant or the |

¹⁵ http://www.aki.ee/sites/www.aki.ee/files/elfinder/article_files/ylevaade_reformist_14102016.pdf.

¹⁶ http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/80098/OMML_35_2017_EUn_yleinen_tietosuoja.pdf?sequence=1

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| | <p>treatment or other measures directed at the policyholder/claimant, where the processing of such data is necessary for the determination of the award from the insurance company.</p> <p>(iii) In regards to Article 8 GDPR, the working group did not reach consensus of the age limit for when a child can give consent. However, the working group states in its report that both 13 and 15 are possible as age limits. This issue will be resolved later on or in sectoral laws including provisions on the processing of personal data.</p> <p>(iv) The current central government data protection authorities, Data Protection Ombudsman and the Data Protection Board, will be replaced by a single authority, the Data Protection Agency. The Data Protection Agency will continue the activities of the Data Protection Ombudsman with certain internal organizational changes.</p> <p>(v) Certain exceptions to the provisions of the GDPR are proposed in order to integrate the protection of personal data and the freedom of speech and expression. In addition, some derogations from certain provisions of the GDPR are proposed to the processing of personal data for scientific and historical research and statistical purposes.</p> <p>After its publication in June, the committee report was circulated for comments. The deadline for comments was early September 2017, after which a final proposal (i.e. a government bill) is to be drawn up and submitted to the Parliament. After the parliamentary proceedings, the proposed Act is to come to force on 25 May 2018. The government bill for the Finnish Data Protection Act has not been published and no further specifics on the schedule of the parliamentary proceedings are available.</p> |
| France | <p>The "Digital Republic Act" (Lemaire Law) of October 7, 2016 already anticipates some provisions of the GDPR, such as:</p> <p>(i) Right to be forgotten;</p> <p>(ii) The right for individuals to give instructions relating to the storage, erasure and disclosure of their personal data after their death;</p> <p>(iii) Increased sanctioning powers for the CNIL: maximum fines are increased from €150,000 to €3 million in case of data protection infringements;</p> <p>(iv) Right to portability.</p> <p>The Data Protection Bill of December 2017 is transposing and supplementing the GDPR provisions at local level.</p> <p>Some notable provisions of the Bill relate to:</p> <p>(i) The reinforcement of the CNIL's powers;</p> <p>(ii) The reinforcement of the sanctions incurred, which could total 20 million euros or 4% of consolidated global annual revenues;</p> <p>(iii) Certain prior formalities will be maintained "<i>for the processing of the most sensitive data</i>" (biometric data used for identity checks, genetic data, processing using social security number - NIR). Such processing will also require the appointment of a Data Protection Officer (DPO).</p> <p>The following resources are available in French only:</p> <ul style="list-style-type: none"> ▪ the Lemaire Law¹⁷ ▪ the parliamentary information report¹⁸ concerning the consequences of the GDPR vis-à-vis the actual regulatory framework regarding data protection |

¹⁷https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=495DC3C1DF411A0623D70A87FCB381EA.tpdila08v_3?cidTexte=JORFTEX T000033202746&categorieLien=id.

¹⁸ <http://www.assemblee-nationale.fr/14/pdf/rap-info/i4544.pdf>.

- the CNIL annual report¹⁹

Data Protection Bill:

- the Data Protection Bill of 14 December 2017²⁰,
- the Data Protection Bill explanatory memorandum of 14 December 2017²¹,
- the CNIL's deliberation No. 2017-299 of 30 November 2017 on an opinion related to Data Protection Bill²²,
- opinion of French "Conseil d'Etat " on Data Protection Bill of 11 December 2017²³,
- impact Assessment of the Data Protection Bill published by French Government on 13 December 2017²⁴.

Germany

In May 2017, German lawmakers passed a Bill that shall revoke the existing Federal Data Protection Law (FDPA - Bundesdatenschutzgesetz) and enacts a new national data protection law supplementing the GDPR (Amendment Act). The Amendment Act had already been passed by the German parliament (Bundestag) in April 2017, and was approved by the Federal Council representing the German states in the national legislative process (Bundesrat).



BDSG.neu.pdf



FDPA new.pdf

The German legislature has made extensive use of opening clauses.

Some notable provisions of the Bill relate to:

- **Protection of Employee data**

Comprehensive rules on data protection in the employment context have been established. Those rules seemingly build on the current rules under the FDPA as well as the rules and legal opinions that had been formed by German legal literature, courts and DPAs. The Amendment Act specifies the requirement for consent being voluntary and allows for the processing of sensitive personal data of employees for purposes of an employment relationship if such processing is required in order to exert rights or comply with duties under employment law, social law or social protection law and if there is no overriding interest of the data subject.

- **Data protection officer**

The Amendment Act retains the currently existing thresholds and criteria for the requirement to appoint a DPO. Hence, a company will remain to be required to appoint a DPO if it permanently employs at least 10 employees where the company is concerned with the automated processing of personal data.

- **Data subject rights**

Data subject rights, such as right of information, right of access and right to be

¹⁹ https://www.cnil.fr/sites/default/files/atoms/files/cnil-37e_rapport_annuel_2016.pdf.

²⁰ https://www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=AD5660270AD9F70B94275AC823321680.tplgfr22s_3?idDocument=JORFDOLE000036195293&type=contenu&id=2&typeLoi=proj&legislature=15

²¹ https://www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=AD5660270AD9F70B94275AC823321680.tplgfr22s_3?idDocument=JORFDOLE000036195293&type=expose&typeLoi=proj&legislature=15

²² <https://www.legifrance.gouv.fr/affichCnil.do?oldAction=rechExpCnil&id=CNILTEXT000036195647&fastReqId=180931766&fastPos=1>

²³ <https://www.legifrance.gouv.fr/Droit-francais/Les-avis-du-Conseil-d-Etat-rendus-sur-les-projets-de-loi/2017/Projet-de-loi-d-adaptation-au-droit-de-l-Union-europeenne-de-la-loi-n-78-17-du-6-janvier-1978-relative-a-l-informatique-aux-fichiers-et-aux-libertes-JUSC1732261L-13-12-2017>




²⁴ https://www.legifrance.gouv.fr/Media/Droit-francais/Etudes-d-impact/ei_art_39_2017/ei_pjl_protection_donnees_personnelles_cm_13.12.2017


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| | <p>forgotten are further restricted. For example, right of access is restricted if the personal data is only stored for compliance with statutory or contractual retention obligations or if the personal data only serve the purpose of data security and data protection control. Right of erasure does not apply if erasure requires an unreasonably high effort due to the specific type of storage.</p> <ul style="list-style-type: none"> ▪ Sensitive data <p>The Amendment Act provides for national law provisions permitting the processing of sensitive data, supplementing Art. 9 Sec. 2 (b), (g), (h), (i), and (j) GDPR). Processing of sensitive data is permitted, amongst others and subject to additional requirements, if: (1) the processing is necessary to exercise rights and comply with obligations in the area of social security or social protection laws; (2) for purposes of preventative health care, assessment of the working capacity of employees, medical diagnosis, provision of health or social care or treatment, management of health or social care systems and services as well as on the basis of a treatment contract; (3) for reasons of public interests in the area of public health, such as protection against severe cross-border health risks; and (4) for archiving purposes in the public interest, scientific or historical research purposes.</p> |
| Greece | <p>A legislative committee has been set up regarding GDPR's opening clauses, but for the time being no (official or unofficial) draft has been published/ leaked or publicly discussed.</p> |
| Hungary | <p>On 29 August 2017, the Hungarian Ministry of Justice published the draft Hungarian GDPR Implementation Act for public consultation. The draft legislation adopts a minimalist approach to GDPR implementation, restricting the scope of material changes to existing laws to the bare minimum necessary to comply with the requirements of the GDPR. The main provisions of the draft legislation can be summarized as follows:</p> <ul style="list-style-type: none"> ▪ it extends the provisions of the GDPR to manual processing, even if the personal data are not contained or intended to be contained in a filing system; ▪ it does not provide for any special provisions concerning data processing in the context of employment; ▪ it maintains the current rules regarding the processing of health data, including the obligation to obtain written consent for such processing; ▪ it grants the relatives of a deceased person the ability to exercise the right of erasure and to obtain a restriction on processing upon request made within five years following the death; ▪ it requires the data controller to review its data processing activities based on Article 6(1)(c) and (e) GDPR every three years, if applicable law does not establish a different time limit for retaining data. The review must be documented and be presented to the Hungarian DPA upon its request; ▪ it extends the penalty provisions to SMEs by removing the exemption concerning small and middle sized undertakings, which to date may receive only a warning (rather than a fine) for their first non-compliance with the law; ▪ it no longer requires local filing and/or approval requirements concerning data processed under the GDPR. However, the draft provides that the Hungarian data protection register shall be archived and that the DPA may use the previous filing's details in connection with investigations concerning data processing started before 25 May 2018. <p>Following the public consultation of the draft Hungarian GDPR Implementation Act, the Hungarian Government decided to establish a Working Group to review the sectoral rules relating to EU data protection reform. The first Working Group meeting took place in November 2017 and the Working Group members were asked to indicate possible consistency issues between Hungarian sectoral data privacy laws and the GDPR and to make legislative proposals regarding the review</p> |

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| | <p>of sectoral data privacy laws in early January 2018. The Ministry of Justice confirmed that the scope of the sectoral rules subject to review is not yet limited. The Working Group will discuss the relevant proposals in February 2018. The Hungarian GDPR Implementation bill - also including the sectoral data privacy rules - is expected to be passed during the spring session of the Parliament, most probably around April 2018.</p> |
| Ireland | <p>The Irish government has published the General Scheme of the Data Protection Bill. The finalised Data Protection Bill has not yet been published. The Data Protection Bill will give full effect to the GDPR and also to transpose Directive 2016/680.²⁵ A summary of the proposals is also available.²⁶ A joint committee has carried out pre-legislative scrutiny of the proposed Data Protection Bill. A number of areas such as the processing of sensitive data are still under review and consultation by the Department of Justice and Equality.</p> |
| Italy | <p>The Italian Data Protection Authority (Garante per la Protezione dei Dati Personali) has published documents on its website summarising the main changes introduced by GDPR. In particular, said documents provide a description of the data protection officer role, data breach notifications and the right of data portability. The Data Protection Authority also published FAQs on the role of the DPO in the public sector, integrating those already published by the Article 29 Working Party.</p> <p>In addition to Law 163/2017, delegating the Government to modify the Privacy Code according to the GDPR (see question 1), in November 2017, the Parliament approved a new law in November 2017 (Legge n. 167, published in the Official Journal on 27th November 2017) that modifies the Privacy Code (Legislative Decree n. 196/2003). The bill allows the Data Controller to nominate as Data Processors both public and private entities and defines in detail the content and form of the appointment act. In addition, the Privacy Code now also allows, on a case-by-case basis, the re-use of data, even sensitive data (with the only exception of genetic ones), for scientific research or statistical purposes, provided that forms of minimization and anonymization are adopted.</p> <p>With the Budget Law (Law n. 205 of December 2017) the Italian Parliament introduced further provisions regarding the implementation of the GDPR: (a) the Italian Data Protection Authority (DPA) will monitor the application of the GDPR and the existence of adequate infrastructures for the interoperability of the formats. It will also publish a template privacy notice, guidelines and best-practices for the processing operations carried out by data controllers on the ground of legitimate interest using new technologies and automated means; (b) data controllers that carry out processing operations on the ground of legitimate interest using new technologies and automated means are required to make a prior notification to the DPA. The DPA can investigate it and stop processing operations that violate data subjects' rights.</p> |
| Latvia | <p>The draft of the new Personal Data Processing Law is now publicly available and its contents are already being discussed. The draft law mostly concerns institutional issues, procedures, and judicial relations, focusing on the functions and status of the national data protection authority, data protection officers and other aspects.</p> <p>Under "Specific processing situations" of the draft law, all national derogations from the GDPR are enlisted. For instance, Latvia has chosen that the age for minor's consent in relation to Information Society Services under Art.8 GDPR will be 13 years. This is due to the fact that many other legislative acts in Latvia already allow children between 13-16 to decide on a number of things, such as on social services</p> |

²⁵[http://www.justice.ie/en/JELR/General_Scheme_of_Data_Protection_Bill_\(May_2017\).pdf/Files/General_Scheme_of_Data_Protection_Bill_\(May_2017\).pdf](http://www.justice.ie/en/JELR/General_Scheme_of_Data_Protection_Bill_(May_2017).pdf/Files/General_Scheme_of_Data_Protection_Bill_(May_2017).pdf).

²⁶http://www.algoodbody.com/insightspublications/General_Scheme_of_Data_Protection_Bill_Published_2017.

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| | <p>(i.e. rehabilitation, social care and social help services) medical aid, email address, as well as being administratively and criminally liable.</p> <p>The legislator has also relied on Article 85 GDPR to include an exemption from general rules regarding data processing for journalistic, academic, artistic, literary purposes and freedom of expression.</p> <p>Furthermore, according to the draft law public officials will also be liable for violations in the field of data protection with a fine up to 200 currency units (currently EUR 1000).</p> <p>Some further changes can still be expected when the draft is reviewed in the next legislative stages.</p> <p>The current text of the new draft legislation (in Latvian):</p> <p> Personal Data Processing Draft Law</p> |
| <p>Lithuania</p> | <p>The Ministry of Justice of the Republic of Lithuania has prepared and submitted the draft of the Law on Legal Protection of Personal Data. The draft of the law follows GDPR requirements closely. It is expected that the draft will be approved before the end of March 2018.</p> |
| <p>Luxembourg</p> | <p>A new bill, the Project Bill, concerning the amendment of the existing law regarding data collection and surveillance has been approved by both the Conseil d'État and Council of Ministers in May and July 2017 respectively.</p> <p>The rationale for this is administrative simplification and better protection of the data subject. It gives the CNPD greater power to control the way data is collected and processed, while reducing the administrative burden by reducing the cases where authorisation has to be sought from the CNPD.</p> <p>  Position of the Luxembourg Conseil c August 2016 amendir Project Bill dated 31</p> <p>In addition, a second draft bill establishing the National Commission for Data Protection and implementing the General Data Protection Regulation (GDPR) was filed in September 2017 by the Ministry of Communication & Media in Luxembourg (Draft Bill - N°: 7184).</p> <p>The draft bill confirms and extends the competences of the CNPD, which will notably be empowered to:</p> <ol style="list-style-type: none"> 1. monitor compliance with the GDPR by any data controller or processor (as well as with the draft bill n°7168 regarding data processing in criminal matters and matters of national security); 2. have legal standing and initiate judicial proceedings in the interests of the GDPR; 3. require from any data controller or processor all the necessary information to assess their compliance with the GDPR; 4. order a data controller / processor to suspend or stop the processing of personal data; 5. impose administrative penalties and sanctions on parties found to have infringed the GDPR (with periodic penalty payments when necessary). <p>The draft bill also provides for specific provisions that were left to the discretion of Member States:</p> <ol style="list-style-type: none"> 1. The draft bill grants some exemptions from the GDPR's obligations in case of: |

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| | <ul style="list-style-type: none"> (i) data processing for the purposes of journalism, university research, art or literature (Art. 56 of the draft bill); (ii) in the case of data processing for the purposes of statistics or scientific or historical research, provided that such "limitations" are proportional to the aim pursued and the nature of the data and of the processing is taken into consideration (Art. 57 of the draft bill). The counterpart of the exemptions is a long list of additional safeguards that data controllers processing data for statistics or scientific or historical research must put in place, including, as the case may be, the designation of a Data Protection Officer and the conduct of a Data Protection Impact Assessment (Art. 58 of the draft bill). <p>2. Regarding the processing of sensitive data, including health data, the draft bill confirms that such processing is allowed for relevant medical bodies and healthcare professionals in the framework of their activities, as well as for research bodies (with appropriate safeguards), social security organisations, insurance companies, pension funds, the Medical and Surgical Mutual Fund and other approved organisations. The lawful transfer of sensitive data between these actors is also facilitated.</p> |
| <p>Malta</p> | <p>There has been nothing announced as the GDPR will be directly applicable in Member States with effect from 25 May 2018.</p> |
| <p>Netherlands</p> | <p>In December 2016, the Dutch government published a ministerial draft bill (freely translated the "Implementation Act regarding the General Data Protection Regulation") on the official government website. A final legislative proposal has not been published yet.</p> <p>The aim of the Implementation Act is to implement the GDPR in policy-neutral way. In order to implement the GDPR in our national legislation, the draft bill aims to replace the Dutch Personal Data Protection Act (and intends to follow the Dutch Personal Data Protection Act as close as possible, with two specific exceptions: (a) changes as to how appointments are made at the competent supervisory authority; and (b) processing of biometric data for the sole purpose of identifying a natural person will be allowed).</p> <p>With effect from 6 November 2017, in practice organizations no longer need to report the processing of personal data to the Dutch DPA. With the GDPR, the duty to report comes to an end. Until 25 May 2018, organizations may still report personal data processing but the DPA will as, of 6 November 2017, no longer enforce compliance with this duty to report. This significantly reduces the administrative burden. Only in the event of data processing that involves a certain risk and for which prior investigation is required, will the duty to report still apply. This means that the DPA will first examine whether the processing meets the requirements of the Dutch Personal Data Protection Act. Only after approval of the DPA can a controller start processing.</p> <div style="text-align: center;">  <p>Wet en mvt uitvoering verordenin</p> </div> |
| <p>Poland</p> | <p>The main subject matters covered by the draft of the new Personal Data Protection Act are as follows:</p> <ol style="list-style-type: none"> 1. introducing a new data protection authority – the President of the Office for Personal Data Protection ("PUODO") will replace the Inspector General for Personal Data Protection; 2. defining the powers and tasks of the PUODO; 3. new rules of civil liability for data protection infringement; 4. new criminal sanctions for obstructing investigations carried out by the |

PUODO;

5. introducing certification and accreditation mechanisms;
6. derogations for GDPR applicability in relation to press, literary and artistic activities, as well as processing for purposes of "academic expression";
7. new rules of appointing and notifying data protection officers (DPOs);
8. setting the minimum age for minors to consent to data processing at 13.

Together with the PDPA, the Ministry of Digitization proposed an Act on Introducing the PDPA, which contains a number of derogations from the GDPR (opening clauses) to be introduced in specific legal acts, as well as detailed rules regarding data processing by certain types of data controllers. According to the proposal, they will apply in the context of data processed (some examples below):

1. for the purposes of national security, e.g. in relation to soldiers' and military data;
2. by public schools, libraries, museums and some other educational and cultural institutions and facilities;
3. by legal professionals;
4. in public archives and various public registries;
5. by collective management societies;
6. for the purposes of public statistical information authorities;
7. by various types of public and government authorities, such as tax authorities;
8. by hotels (limited exceptions apply);
9. by banks and insurance sector companies (limited exceptions and special permissions apply);
10. by the courts, judicial authorities and registries (e.g. National Criminal Registry);
11. by the National Health Fund in the context of the public healthcare system.
12. by employers, in particular regarding the processing of data in relation to employees and applicants.

All interested parties are currently awaiting Ministry of Digitalization response to comments and proposals submitted during the consultations, which ended in October 2017.



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Portugal

The Portuguese Government held a public consultation which ran until the end of September 2017 on the following topics:

1. Additional requirements and limits on the processing of special categories of personal data - genetic, biometric and health data;
2. The need for specific rules on the processing of personal data in the labor context and corresponding guarantees;
3. The need for specific rules on data portability between entities providing financial, banking, insurance and communications services, or other areas or sectors of activity;
4. Conditions applicable to the consent of children as to information society services;
5. Reinforcement of the right to erase data ("right to be forgotten");
6. Reinforcement of the exceptions applicable to individual automated decisions, including profile definition;
7. Appointment, position and duties of the data protection officer, namely the adequacy of the appointment of a sole data protection officer for a sector or for

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| | <p>certain sectors of activity.</p> <p>The conclusions of the public consultation are not available.</p> |
| Romania | <p>According to publicly available sources, no such legislative efforts have been made yet in Romania.</p> |
| Slovakia | <p>As stated in Question 1, the DPA intends to completely discard the current Data Protection Act and to substitute it with the Act that will better reflect the GDPR.</p> <p>The draft bill reflects new rules introduced by the GDPR, regulates procedural rules and status of the authority supervising data protection, as intended by the GDPR, as well as reflects the decision-making practice of the DPA.</p> <p> Draft Bill Slovakia</p> |
| Slovenia | <p>The draft bill was published for the purpose of public consultation at the beginning of October 2017.²⁷</p> <p>Among other the draft of the new Personal Data Protection Act covers:</p> <ol style="list-style-type: none"> 1. child's consent (age limit is set at 15 years); 2. processing of personal data about criminal convictions; 3. data processing in the public sector; 4. processing of special categories of personal data; 5. protection of freedom of expression and access to information in relation to protection of personal data 6. data retention periods (the general data retention period is set at 5 years); 7. appointment of DPO; 8. video surveillance of building entrances, work places and public surfaces; 9. biometrical measures; 10. certifications; 11. inspections procedure and competences of the Information Commissioner. <p>The new Personal Data Protection Act is intended to (i) replace the existing Personal Data Protection Act, (ii) regulate certain areas related to opening clauses under the GDPR and (iii) regulate all data protection matters in a single Act.</p> |
| Spain | <p>As outlined in Question 1, the Personal Data Protection Bill is going to be discussed in Parliament soon. Relevant changes introduced by the new Bill are:</p> <ul style="list-style-type: none"> ▪ Consent for personal data processing must now be affirmative and express (implied consent is excluded); ▪ Requirement to appoint a Data Protection Officer in specific circumstances; ▪ Minors above 13 years old can effectively give their consent for the processing of their personal data; ▪ Certain special data categories cannot be processed solely on the basis of the express consent of the data subject; ▪ Portability right is introduced in Spanish Law; ▪ Certain kinds of data processing are now presumably based on the legitimate interest of the data controller and, consequently, lawful, such as the processing of contact details and data of individual entrepreneurs, fraud information sharing systems or mail preference systems (Robinson Lists). |

²⁷ The draft act is available here: http://www.mp.gov.si/si/zakonodaja_in_dokumenti/predpisi_v_pripravi/

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| | The Bill is planned to come into force on 25 May 2018. |
| Sweden | <p>There are no draft laws available yet. Government-appointed committees are currently working on preparing proposals for new laws based on the instructions provided by the government. The first proposal was issued 12 May 2017²⁸ and is currently sent out on referred for consideration to the relevant bodies. The proposal is to replace the current Swedish Personal Data Act with a new Data Protection Act. The deadline for responses to the referral is set to 1 September 2017. When the referral bodies have submitted their comments, the ministry responsible drafts the bill that will be submitted to the parliament. Some notable provisions of the proposal relate to:</p> <ul style="list-style-type: none"> ▪ Childrens' consent (Article 8 GDPR) The committee proposes that the age limit for childrens' consent should be lowered to 13 in Sweden. For younger children, consent must be given by a custodial parent or the child's consent must be approved by the custodial parent. ▪ Processing of sensitive (special categories) personal data (Article 9 GDPR) The committee proposes that in addition to the exemptions for processing of special categories of personal data support should be introduced in the Data Protection Act with regard to necessary processing of personal data in the area of employment law, health and medical care, social care, archive activities and statistics activities. ▪ Processing of personal data concerning criminal offences (Article 10 GDPR) The committee proposes that that authorities should continue to be able to process personal data that concerns criminal convictions and offences or coercive measures under criminal law. For actors other than authorities to be able to process such data, there must be explicit support in an act or ordinance or in regulations or administrative orders issued by the Swedish Data Protection Authority. ▪ Access to personal data (Article 15 GDPR) The committee proposes that the right to information and access to the personal data should not apply to data that is subject to secrecy regulations. As a general rule, the right to access to the personal data should not apply to personal data contained in running texts that constitute rough drafts or notes. Furthermore, the right to access to the personal data, rectification, etc. is to be restricted as regards personal data contained in archive material received for storage by the National Archives and other archiving authorities. <p>The second proposal was issued on 1 June 2017²⁹ and covers personal data processing within the education sector. The proposal mainly covers changes to current statutes applicable within the education sector to allow special categories of personal data and personal data relating to criminal convictions and offences to be processed by private schools (an exemption applicable for public schools was already included in the proposal for a Swedish Data Protection Act.</p> <p>The third proposal was issued on 1 June 2017³⁰ and covers personal data processing for research purposes. The committee proposes that a Research Data Act should be introduced to supplement the GDPR and the Swedish Data Protection Act. The Committee proposes a provision in the Research Data Act that</p> |

²⁸ <http://www.regeringen.se/49a184/contentassets/e98119b4c08d4d60a0a2d0878990d5ec/ny-dataskyddslag-sou-201739>

²⁹ <http://www.regeringen.se/49ba50/contentassets/f800d03de7fc4ee189db78cf1348cfcf/eus-dataskyddsförordning-sou-201749.pdf>

³⁰ <http://www.regeringen.se/49c8c5/contentassets/691a7761189d4f1a81400d9497e6d600/personuppgiftsbehandling-for-forskningsandamal-sou-201750.pdf>

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| | <p>allows for processing of special categories of personal data and personal data relating to criminal convictions and offences where it is necessary to process this data for the purpose of the research. As the main safeguard, the committee proposes that the ethical review requirement in line with the Ethical Review Act remains.</p> <p>The fourth proposal was issued 15 June 2017³¹ and covers camera surveillance and the processing of personal data. The committee proposes a new Camera Surveillance Act which will be adapted to the GDPR. The most noteworthy change compared to the current Swedish Camera Surveillance Act is that the proposal abolishes the general requirement for a notification or a permit for camera surveillance in order to align the Camera Surveillance Act with the GDPR. However, the committee proposes that a specific permit requirement should apply for public authorities and certain private actors carrying out tasks in the public interest.</p> <p>The key ongoing investigation is the one regarding the Data Protection Regulation – processing of personal data and adaptations within the Ministry of Health and Social Affairs Areas (report to be issued 31 August 2017) - This committee has been appointed to investigate the consequences of the GDPR within the areas of the Ministry of Health and Social Affairs and the adaptations required. This will for example cover the current Patient Data Act which sets out specific rules for health care providers' processing of personal data.</p> <p>Please find below the instructions provided to the committee: The investigation regarding the Data Protection Regulation – processing of personal data and adaptations within the Ministry of Health and Social Affairs Areas.³²</p> |
| UK | <p>In September 2017, the UK Government introduced a Data Protection Bill³³ against the dual backdrop of Brexit and the GDPR. The Bill is intended to (i) replace the current UK Data Protection Act (the "DPA"), (ii) supplement the GDPR by including certain derogations and options from the GDPR which are left to the authority of individual EU member states, and (iii) implement the EU Law Enforcement Directive.</p> <p>Key aspects of the Bill are:</p> <ol style="list-style-type: none"> 1. The current conditions for processing sensitive and criminal data provided in the DPA are replicated in the Bill although in under certain circumstances there is an additional requirement that the data controller must have in place an appropriate policy document to establish the procedures for complying with the data protection principles and rules for data retention and deletion; 2. Most of the current DPA exceptions to data subject rights, for example, processing for crime or taxation purposes, are repeated in equal or similar terms; 3. The minimum age for minors to consent to data processing is set at 13; 4. The current DPA safeguards for automated decision-making, such as profiling, are reflected in the Bill; 5. Conditions for processing data for research, statistics or archiving purposes are similar to those set out in the DPA; 6. The Bill sets out similar enforcement powers for the Information Commissioner's Office (ICO) as under the DPA, which include the power to Issue Enforcement Notices, Assessment Notices, Enforcement Notices and Penalty Notices. Under the Bill, the ICO has the power to issue monetary |

³¹ <http://www.regeringen.se/49d952/contentassets/62ecc694ed8a4b4fa5b2dddf267e75aa/en-ny-kamerabevakningslag-sou-201755>

³² http://www.regeringen.se/contentassets/ef9f33eb227540b6bc8c54c004d5bc77/dataskyddsförordningen--behandling-av-personuppgifter-och-anpassningar-av-författningar-inom-socialdepartementets-verksamhetsomrade.pdf?_sm_au_=iVV765pS17FW757Q

³³ Data Protection Bill [HL] 2017-19, available at < <https://services.parliament.uk/bills/2017-19/dataprotection.html>>.

penalties up to the maximum level set out in the GDPR;

7. The Bill does not convert the maximum amount of the GDPR fines from Euros to Pounds. The monetary penalty will be determined in Pounds based on the spot rate of exchange set by the Bank of England on the day which the penalty notice is given;
8. In addition to replicating existing criminal offences under the DPA, the Bill also introduces two new criminal offences concerning unlawful data processing, namely (i) knowingly or recklessly re-identifying anonymised data; and (ii) altering data to prevent its disclosure following a data subject access request;
9. The Bill implements provisions concerning personal data processing for the purposes of (i) law enforcement and (ii) the authorities of the intelligence services; and
10. The Secretary of State may make future regulations to require data controllers to (i) pay a charge to the Information Commissioner's Officer ("ICO") and (ii) provide information to the ICO for the determination and collection of the charge, which will continue to fund the ICO's activities.

As long as the UK continues to be an EU Member State, the GDPR and the Bill (which will become the new Data Protection Act) together will form the statutory framework for UK data protection law.

The Government's stated intention is to maintain the GDPR provisions following the UK's exit from the EU. In order to do this, the provisions of the GDPR must be transposed into domestic law by means of the future European Union (Withdrawal) Bill currently before the UK Parliament.

The Bill is currently undergoing the parliamentary process. Regardless of any future iterations of the Bill, it is clear that the government's intention is that pre- or post-Brexit the GDPR will become part of the future landscape of UK data protection law.

Question 3 - Key Legal Debates

What are the most intensely debated issues in respect of the GDPR in your jurisdiction?

Are there any indications on how the national legislature plans to deal with those issues (e.g., establishing more/less strict rules in specific areas)?

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| <p>Austria</p> | <p>The new obligation under the GDPR to appoint a Data Protection Officer as the current Austrian Data Protection Act does not provide for the legal figure of a Data Protection Officer.</p> <p>The DPA 2018 does not use the opening clause concerning the mandatory appointment of a Data Protection Officer. The obligation to appoint a Data Protection Officer is limited to the cases specified in the GDPR.</p> |
| <p>Belgium</p> | <p>The Belgian Data Protection Authority (the Belgian Privacy Commission) is quite active regarding the GDPR and dedicated a new section on its website for the GDPR, which includes (i) practical guidance in 13 steps for businesses to prepare for the GDPR, (ii) FAQs in relation to certain aspects of the GDPR, (iii) a draft recommendation on data protection impact assessments, including a public consultation, (iv) a recommendation on the records of processing activities, etc.</p> <p>We are not aware of any indication from the Belgian legislator in respect of dealing with the above issues.</p> <p>This being said, the Belgian Privacy Commission recently adopted an opinion regarding a draft bill that will change the Belgian Privacy Commission as per Article 54 of the GDPR. In this opinion, the Privacy Commission expresses a number of legal and practical concerns about the draft bill.</p> |
| <p>Bulgaria</p> | <p>We are not aware of any debated issues in respect of the GDPR.</p> |
| <p>Croatia</p> | <p>The Croatian DPA has organized educational workshops where certain provisions of the GDPR have been debated, including most notably:</p> <ul style="list-style-type: none"> (i) data protection officers (especially when designated for groups of undertakings); (ii) certification authorities (i.e. whether the Croatian DPA or the National Accreditation Agency will have the power to issue certifications to controllers or processors); and (iii) litigation proceedings for the infringement of the right to data privacy. <p>With regard to the issue of data protection officers, Croatian DPA has published guidelines adopted by Article 29 Working Party, on Data Protection Officers, which is indicative of the way the issue is likely to be treated, but no other specific solutions which could be implemented by the new Act with regard to any of the above issues have been disclosed publicly.</p> |
| <p>Czech Republic</p> | <p>Generally, the most intensely debated issues include application of the rules which have been introduced by the GDPR and their implementation by the parties concerned, in particular, their technical and organisational feasibility.</p> |
| <p>Denmark</p> | <p>Sanctions against public authorities for non-compliance</p> <p>A popular topic for discussion is whether public authorities should be fined for not complying with the GDPR. The draft bill stated that the decision regarding penalties relating to public authorities' non-compliance remains unsettled. This is the current position of the government, even though the majority of the Danish Parliament has declared its willingness to apply the same sanctions for public</p> |

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| | <p>authorities as for private companies.</p> <p>Registrations with the Danish Data Protection Agency is another topic of discussion. It has been debated whether the general obligation to register and get a prior permission from the Danish Data Protection Agency before processing data purely about private matters, data about criminal offences, or sensitive data is to be abolished when GDPR takes effect. It seems from the draft bill that this general obligation will be abolished in accordance with GDPR Recital 89.</p> |
| Estonia | <p>There have not yet been any legislative efforts to amend/abolish existing data protection laws or to introduce new laws in the light of the GDPR. Therefore, there have not yet been key legal debates regarding the GDPR. However, in the public media, the most debated issues concern the increased administrative fines.</p> <p>Also, it has been discussed that the Estonian Code of Misdemeanour Procedure (Code) will be amended in relation to the implementation of GDPR. Currently the Code does not allow for administrative fines as set out in GDPR. However, no draft amendments have been issued and therefore it is not clear how exactly the Code will be amended.</p> |
| Finland | <p>During the preparation of the GDPR, Finland made an effort to make sure that the provisions of the GDPR will enable the continuation of biobanking, compilation of wage statistics and genealogy. Finland wanted to particularly retain the transparency of administration by making sure that the GDPR will not affect the principle of openness and the public's right to access official documents.</p> <p>During the circulation for comments, the proposed government bill for a Finnish Data Protection Act received plenty of feedback (published comments available only in Finnish or Swedish).³⁴ It has been speculated whether the amount of issued comments has caused a heavier pressure for amending the initial proposal and, whether the final government bill will thus be ready to be submitted to the Parliament as originally planned, or whether the submission will be drawn out longer.</p> |
| France | <p>For now, there is no legal debate concerning the GDPR. However, in June 2016, the CNIL launched a public consultation on the right to data portability, the data protection officer, data protection impact and assessment and certification labels.</p> <p>In November 2016, the CNIL published the results³⁵ of the June 2016 public consultation. On 10 April 2017, the CNIL issued a press release³⁶ where it informed that the Art. 29 Working Party had adopted "a final version of its first guidelines for professionals on data portability, DPO and lead authority".</p> <p>In addition, from 23 February 2017, the CNIL launched two online public consultations on topics identified by the Article 29 Working Party in its 2017 action plan for the implementation of the GDPR. The first three topics were consent, profiling and data breach notification.</p> <p>On 23 May 2017, the CNIL issued a press release³⁷ wherein was published a summary report³⁸ of the 396 online contributions it received concerning these three topics.</p> <p>Since May 2017, the CNIL published the following information:</p> <ul style="list-style-type: none"> ▪ guidelines on data breach notifications³⁹ on 26 July 2017, ▪ updated conditions for obtaining training and governance labels⁴⁰ to take into |

³⁴ <https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposallid=1d738195-b96a-47b8-8a74-6ddda342da60>

³⁵ https://www.cnil.fr/sites/default/files/atoms/files/resultats_de_la_consultation_publique_reglement_0.pdf.

³⁶ <https://www.cnil.fr/fr/communique-de-presse-pleniere-du-g29-davril-2017>

³⁷ <https://www.cnil.fr/fr/consentement-profilage-notification-de-violations-synthese-de-la-consultation-sur-le-reglement>

³⁸ https://www.cnil.fr/sites/default/files/atoms/files/syntheseglobale_consultation.pdf

³⁹ <https://www.cnil.fr/fr/notifications-dincidents-de-securite-aux-autorites-de-regulation-comment-sorganiser-et-qui-sadresser>

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| | <p>account the requirements of the GDPR on 20 September 2017,</p> <ul style="list-style-type: none"> ▪ guidelines for data processors⁴¹ on 29 September 2017, ▪ an explanatory note⁴² on the Article 29 Working Party's guidelines on Data Privacy Impact Assessment on 18 October 2017, ▪ an extension for the three main internet browsers (Firefox, Chrome and Opera) that allows users to effectively exercise their right to be forgotten on 31 October 2017, ▪ an open source software for Data Privacy Impact Assessment that facilitates the conduct and formalization of Data Privacy Impact Assessment as required by the RGPD on 22 November 2017, ▪ an opinion on Data Protection Bill on 30 November 2017. <p>The CNIL also launched a third online public consultation⁴³ on 20 September 2017, this time on international transfer of data and on transparency. The CNIL communicated the contributions received.⁴⁴</p> <p>The Lemaire Law already went further than the GDPR by providing a new right for individuals to give instructions relating to the storage, erasure and disclosure of their personal data after their death (reference to Recital 27 GDPR).</p> <p>The Data Protection Bill was presented by the French government on 13 December 2017. This Bill enables the practical implementation of the GDPR by updating the Data Protection Act of 6 January 1978. However, the Bill needs to be scrutinised in Parliament before the adoption, which will take a few months. Amendments are also expected before final adoption.</p> <p>The Data Protection Bill potentially makes extensive use of opening clauses to maintain more restrictive application of the GDPR obligation, in order to retain control over sensitive data.</p> |
| Germany | <p>There is a broad range of discussions relating to the GDPR. Criticism is typically voiced either regarding the lack of practicality and/or legal certainty (companies' perspective) or regarding the use of opening clauses that is feared to undermine the level of data protection provided for in the GDPR (a perspective often assumed by DPAs and consumer protection associations). A lot of discussions revolve around new elements such as data protection impact assessments and data portability.</p> |
| Greece | <p>Data security. There is no specific indication regarding how this will be dealt with. However, the Greek DPA generally tends to adopt strict views.</p> |
| Hungary | <p>The most intensely debated topics include data breach notification, DPIA and DPA notifications.</p> <p>Following publication of the draft GDPR Implementation Act, there was public debate about whether Hungary could maintain the penalty exemption applicable to small and middle sized undertakings (SMEs) which to date may receive only a warning (rather than a fine) for their first non-compliance with the law. However, the European Commission confirmed to the Hungarian Ministry of Justice that Hungary may not continue this exemption regarding data privacy violations by SMEs after 25 May 2018.</p> |
| Ireland | <p>Since the publication of the General Scheme of the Data Protection Bill, the main areas debated have been: (a) the Bill's proposal that public authorities are</p> |

⁴⁰ <https://www.cnil.fr/fr/mise-jour-des-labels-formation-et-gouvernance-pour-prendre-en-compte-les-exigences-du-rgpd>

⁴¹ <https://www.cnil.fr/fr/reglement-europeen-sur-la-protection-des-donnees-un-guide-pour-accompagner-les-sous-traitants>

⁴² <https://www.cnil.fr/fr/lignes-directrices-du-g29-sur-les-dpia>

⁴³ <https://www.cnil.fr/fr/transparence-et-transferts-internationaux-de-donnees-contribuez-aux-nouveaux-themes-de-la>

⁴⁴ <https://www.cnil.fr/fr/consultation-reglement-europeen>

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| | <p>excluded from the administrative fine provisions, save where acting in competition with the private sector; (b) the digital age of consent and (c) the question of whether legislation should provide for class actions in light of Article 80 of the GDPR. Following public consultation the Irish Government has agreed to set the digital age of consent at 13 years of age.</p> |
| Italy | <p>The most debated points concern:</p> <ol style="list-style-type: none"> 1. the appointment of the data protection officer and, in particular, the technical background (i.e. legal or IT) required to cover this role and the level of DPO's independence; 2. the notification of a data breach and the formalities required to comply with this obligation; 3. the introduction of an additional requirement of prior notification to the DPA for processing operations carried out on the grounds of legitimate interest and whether this requirement conflicts with the accountability principle; 4. whether or not mandatory provisions and guidelines provided by the Italian Data Protection Authority prior to the GDPR's implementation (such as provision on cookies, marketing, profiling, video-surveillance, banking, employees' remote control) will remain in force after May 2018. |
| Latvia | <p>Given that the fines for violations of personal data processing and enforcement level in Latvia are currently relatively low, data controllers and processors are mostly concerned with the large amounts of the possible fines for non-compliance with the GDPR. This has motivated companies to take GDPR more seriously and several have already started compliance procedures, although most of the companies and individuals who will be directly affected by the GDPR have not taken any measures towards complying with all the upcoming requirements set out in the GDPR.</p> <p>There are also ongoing debates and concerns regarding the capacity of the national data protection authority to deal with all its tasks and supervising powers provided by the GDPR.</p> |
| Lithuania | <p>Naturally, the drastically increased fines have raised the most debates in our jurisdiction as businesses are worried about the possibility of fines in a field which is still rather unclear. There were also debates on how the new data subject rights introduced by the GDPR, right to data portability and right to be forgotten, will have to be implemented. Areas such as stricter requirements for consent, requirements for child's consent and the scope of application of the GDPR have been discussed and identified as the most important upcoming changes.</p> <p>The draft of the law provides no indications on how these aspects shall be implemented.</p> |
| Luxembourg | <p>There have not yet been any detailed or official indications or topics.</p> <p>There only is a general statement of the Luxembourg prime minister who confirmed that Luxembourg will welcome and apply the GDPR as an opportunity to increase the protection of customers.</p> |
| Malta | <p>The most intensely debated issues are:</p> <ol style="list-style-type: none"> 1. The definition of consent: Consent will now have to be proven by the data controller and will be made "by a statement or by a clear affirmative action" (Article 4(11), Regulation 2016/679). 2. The right to erasure ('right to be forgotten'): Where there is no further legal ground for processing personal data, data subjects may request removal of their personal data "without undue delay" (Article 17, Regulation 2016/679). Organisations must therefore have the technical capacity and procedures in place to enable the removal of personal data based on a request made under |

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| | <p>Article 17 of the Regulation.</p> <ol style="list-style-type: none"> 3. The increased responsibility on Data Processors: The Regulation aligns the rights and obligations of the data processor with those of the data controller. In particular, the Regulation introduces the concept of "joint and several liability" for damage suffered by the data subject. (Article 82(1), Regulation 2016/679). This means that in the event of a breach, the data subject can pursue either the data controller or processor or both parties. This may create legal uncertainty if not tackled in a back-to-back agreement between the data processor and data controller. 4. The obligation to notify data protection breaches: Notification which is currently contained to the telecommunication sector by virtue of ePrivacy Directive, will apply to breaches for processing personal data following 25th May 2018. (Articles 33 and 34, Regulation 2016/679). 5. Cross-border transfers of personal data outside the EU: Following the <i>CJEU Schrems vs Data Protection Commissioner (Ireland)</i> judgment (6th October 2015) challenging the adequacy of the Safe Harbor standard contractual clauses, standard contractual clauses such as the EU Privacy Shield are also still debatable. 6. Privacy Impact Assessments: These will now be mandatory pursuant to Article 35 of Regulation 2016/679. <p>No official communication has been issued to date.</p> |
| Netherlands | Please see the answer for Question 2. |
| Poland | <p>The most intensely debated issues are as follows:</p> <ol style="list-style-type: none"> 1. New personal data protection authority - The Office. It seems that due to some political issues, the current data protection authority GIODO will be dissolved and replaced by a new authority (PUODO); 2. Profiling, in particular the need for sector-specific exceptions e.g. for banks and insurance companies in order to conduct scoring and anti-fraud; 3. Right to be forgotten - in particular in relation to backed-up data; 4. Scope of employee data which could be collected and processed in the employment context; 5. Accreditation and certification procedure; 6. Personal data protection infringement proceedings; 7. Criminal sanctions, administrative fines and civil liability for infringement; 8. Childs' age limit, verification mechanisms and requirements for consent of the parent or legal guardian. |
| Portugal | <p>Changes to the structure and organisation of CNPD; Sanctions; Processing of HR Data; Data Protection Officer role and requirements; the right to erasure ('right to be forgotten').</p> <p>There has been no indication as to how the Portuguese legislature will deal with these issues.</p> |
| Romania | <p>According to non-official information received from the representatives of the Romanian Data Protection Authority ("RDPA"), the most intensely debated aspects are inter alia related to (i) the sanctioning regime that will be applied in Romania, including the procedure for applying such sanctions; (ii) whether the notification system should be maintained or the rules from the GDPR should be completely adopted or (iii) the obligations of data controllers and data processors.</p> <p>There are no such indications. However, according to non-official information received from the representatives of the RDPA, such authority is planning to organise in the following period some training sessions for its representatives, in order to establish a general and uniform approach to be adopted further to May</p> |

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| | <p>2018. Thus, it is likely that the abovementioned issues will also be discussed during such sessions.</p> |
| Slovakia | <p>Similarly to the legal debates in the Czech Republic, the discussed issues relate to uncertainties arising from missing national legislation which would specify some of the general rules set out in the GDPR.</p> <p>Furthermore, since Slovakia has decided to take an unusual approach and create a completely new Act for the transposition of the GDPR, the focal point of the debate revolves around the question of whether the completely new law was necessary since the GDPR applies directly in all Member States.</p> <p>Certain ambiguity may arise with respect to the question of which legal regulation to primarily abide by - the wording of the GDPR or the wording of the new Act, or some mixed combination of both. Nevertheless, the wording of the draft of the Act seems in most cases to mimic the wording of the GDPR.</p> |
| Slovenia | <p>The most debated issues are (i) appointment of DPO, (ii) significantly higher sanctions for breaches, (iii) data breach notifications, (iv) consent requirements, (v) profiling and automated decision making and (v) personal data processing in the course of employment.</p> <p>The draft Personal Data Protection Act is silent in the field of the processing of personal data in the course of employment. In this regard the former Information Commissioner, however, outlined that regulation of this field would be very welcome, since most complaints filed with the Information Commissioner relate to the processing of personal data in the course of employment.</p> |
| Spain | <p>As previously outlined, Spanish operators are concerned about the legitimate interest acting as a legal basis for the processing of personal data. Its use was very limited in Spanish law before the GDPR and its later local implementation and SDPA was specially strict in its practical application.</p> <p>However, the Report published by the SDPA can be seen as an indication about how is it going to proceed in relation to legitimate interest. The SDPA's stance seems to have changed to a more permissive interpretation. In addition, the inclusion in the Personal Data Protection Bill of some cases of presumable legitimate interest reinforces this idea.</p> |
| Sweden | <p>The most intensely debated issues are the significant increase in potential sanctions compared to the current Swedish data protection law and how companies should comply with the requirements of the GDPR. Since there are only committee proposals available and not yet any draft laws regarding the possible national Swedish adaptations there is also a general uncertainty regarding the national adaptations and use of opening clauses particularly with regard to patient data and which is not covered by the committee proposal.</p> <p>We are not aware of any indications from the legislature regarding its opinion on the committee proposal or other specific issues.</p> |
| UK | <p>Two major topics currently debated are:</p> <ol style="list-style-type: none"> 1. The meaning of CJEU's jurisprudence in light of the UK's exit from the European Union. There is no comment on the weight to which UK courts will give the CJEU's jurisprudence following Brexit, however it will most likely have persuasive authority. In its report on "Brexit: the EU Data Protection Package" of July 2017, the House of Lords EU Committee stated that "The way that EU institutions such as the new European Data Protection Board and the Court of Justice of the European Union interpret the EU's data protection laws could also affect the UK, albeit indirectly—as demonstrated by the experience of the United States with Safe Harbour. Any changes to EU data protection laws would potentially alter the standards which the UK would need to meet to |

maintain an adequate level of protection".

2. International data transfers from the EU to the UK, following the UK exit from the European Union, and possible adequacy decisions in the future. The issue for the UK will be that other security legislation, for example The Investigatory Powers Act 2016, may mean that an adequacy decision for the UK is challenging, regardless of whether the GDPR is implemented in full. In July 2017, the House of Lords EU Committee urged the Government to seek adequacy decision from the EU Commission as the optimal solution to avoid non-tariff barriers to data flows with the EU (transfer mechanisms such as Binding Corporate Rules and EU Model Clause are seen as sub-optimal options). In August 2017 the Government announced its intention to seek adequacy status from the EU. In particular, the Government has proposed future reciprocal adequacy recognitions with the EU so as to enable free flows of personal data in both directions (from the EU to the UK and vice-versa).⁴⁵

Future determinations regarding UK-EU data flows and the impact of CJEU's jurisprudence on UK law after Brexit will depend on the outcome of the ongoing Brexit negotiations.

Three other important topics on which the ICO has called for public comments over the past months are:

- (i) Consent requirements under the GDPR. The ICO launched a consultation on a proposed GDPR Consent Guidance in March 2017. The consultation is now closed and the proposed guidance is pending for final approval by the ICO;
- (ii) Profiling and automated-decision making under the GDPR. The ICO requested feedback from the public on this topic in April 2017 with a view to inform the ICO's contribution to the guidelines of the Article 29 Working Party on this topic (these guidelines of the Article 29 Working Party are currently subject to public consultation);
- (iii) GDPR contracts and liabilities between controllers and processors. The ICO launched a consultation on a proposed Guidance on this topic in September / October 2017. The consultation is now closed and the proposed guidance is pending for final approval by the ICO.

⁴⁵ UK Government, The exchange and protection of personal data. A future partnership paper. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639853/The_exchange_and_protection_of_personal_data.pdf



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