

ASK THE LAWYER

European data protection regulations

Dr Wulf Hambach and Dr Stefanie Fuchs from Hambach & Hambach explain the impact of the new European General Data Protection Regulation

IN 2015, AFTER years of back-and-forth negotiations, the European Commission reached an agreement on the text of the new European General Data Protection Regulation (GDPR), replacing the out-of-date Data Protection Directive adopted in 1995.

The aim of the GDPR is to unify data protection laws across EU member states and place greater emphasis on accountability. Although many of its key points are similar to those currently in place, the new law has some far reaching and more meaningful implications.

Coming into force on 25 May, the new regime is set to have a significant impact on the online gambling industry.

One of the most notable differences, which has raised eyebrows, is the level of fines that can be imposed on those who breach their obligations. Under the new regulation, businesses can face fines of up to four per cent of their global annual turnover.

The reform also states that companies will be obliged to provide documented evidence of compliance. This means ensuring that members of management and organisational teams examine how they organise themselves around data management.

How a company collects, stores, manages and uses personal data will have a direct impact on the structure of the organisation.

Requirements under the new regime include an obligation to designate a data protection officer; broader rights for individuals such as the “right to be forgotten” and data portability, as well as stricter standards for obtaining valid consent and customer profiling requirements.

This will be the first time many of these gambling companies are required to produce documented evidence of compliance or appoint a data protection officer. All organisations headquartered in the EU will be impacted by the new GDPR.

The new law will also apply to companies outside the EU, which provide products and services to customers based within EU borders, and to companies that monitor the behaviour of EU citizens.

Under the new scheme, EU authorities can take enforcement action against gambling operators based outside the EU but promoting their services in EU jurisdictions.

Under existing legislation, many service providers are not directly accountable for data protection infringements. This will no longer be the case under the GDPR, with data processors being held directly accountable for their responsibilities.

One of the reasons behind the introduction of the GDPR is the misuse of personal data information by multinational corporations such as Facebook. While much of the attention has so far focused upon the possible fines that could be levied against companies, a potentially greater threat is the impact a breach could have on an organisation’s public image.

The impact of image damage is much higher with the GDPR than under the current legislation, as the GDPR imposes stricter reporting obligations in cases of infringements of personal data. In addition, individuals must be informed when their rights and freedoms are at risk.

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It is unclear how data infringement offences will affect a business’ image, but once a breach becomes public the damage will likely be critical.

The goal of the new GDPR is to modernise the law and provide a higher level of safety for consumers. However, exactly how GDPR will be enforced remains uncertain, and many companies are unsure how best to put new compliance processes into place. Gambling companies have spent much time and money over the past few years setting up sophisticated systems to gather and process data on their customers. They are now faced with a race against time to ensure these processes are compliant with the new legislation.

This is a major challenge for the industry, and will require significant planning to ensure a smooth transition. The penalties for failing to comply should provide ample motivation for operators to place GDPR compliance high on their list of priorities for 2018, but certainly some will be caught short.

All the indications are that there will be zero tolerance for breaches, so those who do not suitably prepare will have to face the consequences. ■