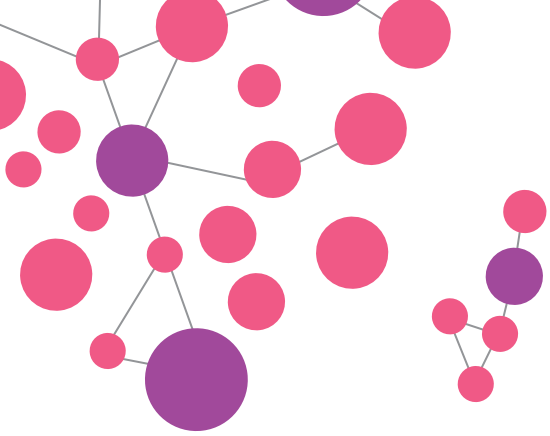


GDPR ONE YEAR ON: A GLOBAL PERSPECTIVE

The EU General Data Protection Act - or GDPR as it is more commonly known - has now been in force for a full year. Heralded as 'the most important change in data privacy regulation in 20 years' it has introduced significant changes to the way in which data is shared, stored and handled. Specifically, the legislation was introduced to harmonise data privacy laws across Europe and enhance protection for EU citizens by instigating wholesale changes in current practices.



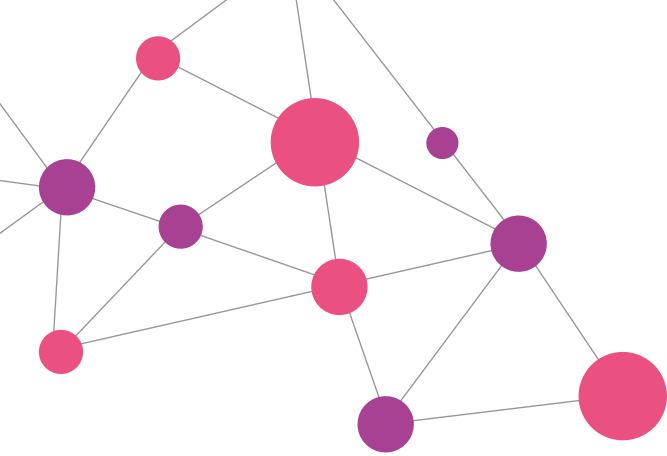


So, in its first year, what has been the impact? We asked our lawyers from across the world - both inside and outside of the EU - five key questions about the lead up to GDPR and its impact post-implementation. While there are inevitably differences in the way it has played out in specific countries, their feedback sheds light on the common challenges businesses across the globe have been grappling with. They also point out that as this is the first year of GDPR we are only seeing the beginning of a permanent sea change in relation to data privacy.

Q1 WAS THERE SIGNIFICANT PUBLICITY IN YOUR JURISDICTION AHEAD OF GDPR COMING INTO FORCE ON 25 MAY 2018?

GDPR IS A HIGH-PROFILE PIECE OF LEGISLATION - WITHOUT EXCEPTION, OUR PARTNERS NOTED THE PUBLICITY IT RECEIVED IN THE LEAD UP TO IMPLEMENTATION. DR FELIX KLOPMEIER, LL.M. AT LANG & RAHMAN IN GERMANY DESCRIBES HOW “GDPR WAS EVERYWHERE IN THE NEWS AND ON THE WEB FOR MONTHS”.

While publicity appears to have been intense across the board, many firms reported how it didn't break through in their jurisdiction until the eleventh hour.



Q2.

WHAT WERE THE MAIN CONCERNS FROM BUSINESS IN YOUR JURISDICTION ON THE POTENTIAL IMPACT OF GDPR?

FEEDBACK FROM OUR PARTNERS REVEALS THREE OVERARCHING CONCERNS AROUND GDPR:

1. Being certain that you have done enough to be compliant with the regulations.
2. The costs involved in becoming compliant...and staying that way.
3. The potential for significant fines if found to be in breach of the regulations.

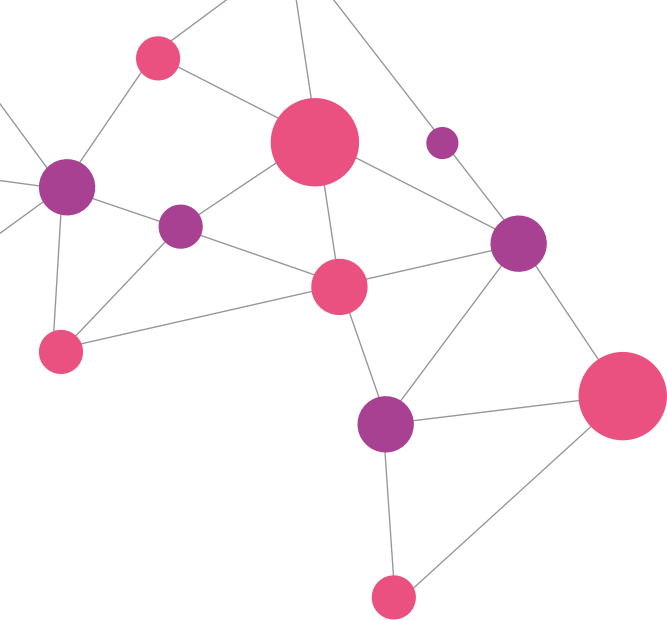
Our lawyers report how businesses found the new regulations to be both complex and ambiguous, making it difficult for organisations to feel confident they were compliant. Businesses were - and in many cases still are - daunted by the enormity of the challenge, with Alexia Valenzia, Associate at Camilleri Preziori in Malta describing *“the need to overhaul entire procedures and processes which had essentially become entrenched in their company’s day-to-day practices.”*

Specifically, our lawyers report how businesses were unclear on a wide range of issues from consent, through to Article 13 and cookie settings. Philipp Spring, Attorney at Law at our partner firm, Binder Grösswang in Austria, explains: *“there were and still are legal ambiguities in the GDPR that lead to uncertainty for many. How the EU Regulation is implemented in Austria is determined by the local Data Protection Act, and this Act has been repeatedly amended - and this has led to even more confusion.”*

Firms based outside the EU highlighted a lack of clarity on exactly who and what activities fell inside the scope of the regulations. According to Nicholas Commins, lawyer at Hunt & Hunt in Australia, businesses were particularly concerned about *“whether or not their business activities would be captured by the GDPR and therefore require compliance. For example, questions were asked about businesses that might have their head office in Europe but wholly owned subsidiaries in Australia, with employees moving between the two jurisdictions, and how and when the relevant rules of the GDPR (and Australia’s Privacy Act) would apply.”*

There were also fears around the potentially detrimental impact of the regulations on commercial activities, as William Robert, partner at Shipman & Goodwin in the US explains: *“the primary concern was how it would impact businesses’ ability to market and sell goods and services in the EU. They feared losing contracts, losing market share and losing consumer and business trust.”*

Above all though, the stringent sanctions under the GDPR - with the potential for fines up to €20 million or four per cent of a company’s annual revenue for the most severe breaches - are at the forefront of business’ minds. This probably explains why there was and still is much concern around being compliant.




Q3.

HAVE THERE BEEN ANY SIGNIFICANT FINES IN YOUR JURISDICTION AS A DIRECT BREACH OF GDPR OR ARE THERE ANY PENDING CASES?

FRANCE HAS MOST CERTAINLY LED THE WAY IN SHOWING THE REAL TEETH OF THIS LEGISLATION. OUR PARTNER FIRM, UGGC, REPORTED HOW ACTIVE THE COMMISSION NATIONALE DE L'INFORMATIQUE ET DES LIBERTÉS (CNIL), THE SUPERVISORY AUTHORITY FOR FRANCE, HAS BEEN IN PROMOTING AND ENFORCING THE REGULATIONS.

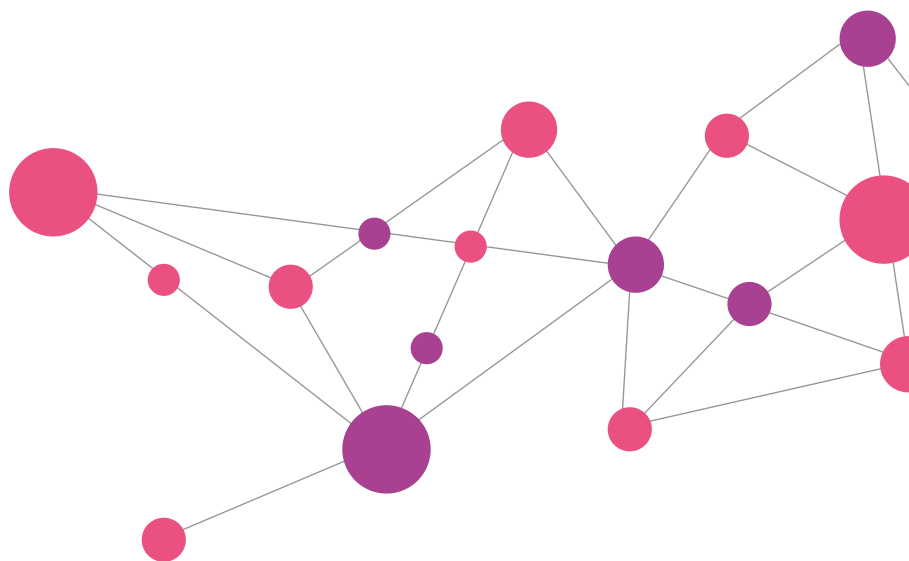
Since implementation, the CNIL has imposed major sanctions, including a record fine of €50 million for Google LLC. Bouygues Telecom, Uber and Dailymotion have also been on the receiving end of significant fines for GDPR breaches, while the Internet Society France is initiating a class action under the GDPR and French law against Facebook later this year.

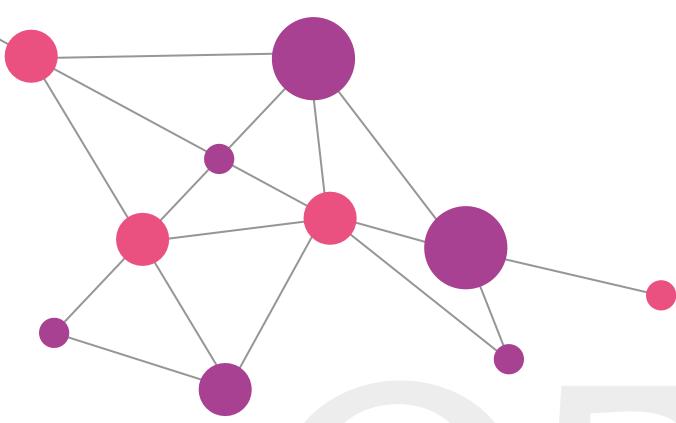
While other countries haven't seen such headline-grabbing sanctions so far, it appears it is only a matter of time before we see significant action in other countries. In Germany, the highest fine that has been imposed to date is €80,000, but Thomas P. Janssen, Attorney at Law, at BRP Renaud in Germany reports that the authorities are working on "*many pending cases*". Germany is not alone, with many of our lawyers saying they can only wait and see to find out how further consequences of GDPR breaches are dealt with or reacted to.



WHAT DO YOU BELIEVE HAS BEEN THE REAL IMPACT OF GDPR IN YOUR JURISDICTION DURING ITS FIRST YEAR?

The impact of GDPR has been more tangible in some jurisdictions than others, but it has most definitely awoken the business community to the need to invest more time and care around the management of data. It seems this legislation has raised awareness and prompted a change in behaviour - admittedly to varying degrees in the first 12 months, but there was a strong feeling among all of our lawyers that this is set to grow, with our partner firm in Vietnam highlighting the commercial imperative for change. Le Tuan Anh, partner at Vision & Associates, said: *“GDPR shall have a considerable impact in Vietnam from 2019 onwards as the public increasingly realizes the importance of data protection and privacy; and in particular, businesses become aware of the demand for satisfaction of the requirements of GDPR if they are to keep commercial relations with European clients.”*





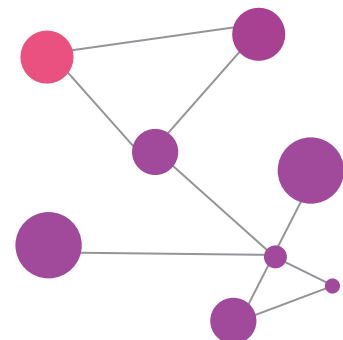
Q5

WHAT DO YOU THINK THE FUTURE HOLDS FOR GDPR?

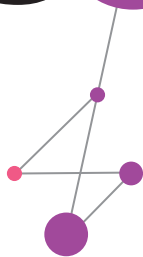
GDPR HAS SUCCEEDED IN TRANSFORMING THE DATA PRIVACY LANDSCAPE AND IS ALSO INFORMING THE LEGISLATIVE DIRECTION FOR MANY NON-EU COUNTRIES. IN SERBIA, A NEW DATA PROTECTION ACT, WHICH IN THE MOST PART IS HARMONISED WITH GDPR, WAS ADOPTED BY THE SERBIAN PARLIAMENT AND IS SET TO COME INTO FORCE FROM 21 AUGUST 2019. CAPITAL LEGAL SERVICES IN RUSSIA ALSO NOTED THAT “EVENTUALLY, RUSSIAN LEGISLATION WILL BE INFLUENCED BY GDPR”.

Overwhelmingly, our lawyers say we are at the beginning of a transformational journey, as new technologies bring further challenges around how to best manage and protect data. ONV LAW in Romania highlight the complications that could arise from advances in artificial intelligence applications, stating that “*future concerns include those related to artificial intelligence, considering that the main activity of the robots is based on information. In our opinion, the GDPR regulation will have to be adapted accordingly, in order to cover all these aspects pertaining to the transfer of information to artificial intelligence.*”

While the initial fanfare and widespread publicity around GDPR may have died down, the focus on the first anniversary should act as an important reminder to ensure compliance is still high on the agenda. Thomas P. Janssen, Attorney at Law, at BRP Renaud in Germany, warns against complacency, commenting “*we are sure that the full effect of the GDPR is yet to come.*”



CONNECT WITH US



INTERLAW OFFERS A GENUINE GLOBAL ALTERNATIVE TO THE TRADITIONAL INTERNATIONAL LAW FIRM MODEL.

Our approach provides our clients with guaranteed quality, serious connections, informed advice, speed, cost-effectiveness and competitive advantage. At a time when business is truly international, we are the alternative global legal practice that clients need to help them succeed in international business.

We would be delighted to discuss our unique solution with you further. To continue the conversation on your global intellectual property, data privacy and information technology legal needs, please contact:

Hans Dhondt
Chair, Global IP / IT Team
INTERLAW LIMITED

t: +32 9 240 77 20
e: +h.dhondt@janson.be



www.interlaw.com

© INTERLAW 2019. INT.LAW.640

