

# The new draft EU General Data Protection Regulation: key changes

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# What we will cover

- Aims, legal effect of the Regulation & timing
- Territorial scope, one stop shop & fines
- Data handling & accountability
- Export from the EU
- New rights
- Processor liability

# Aims, legal effect & timing

- Harmonisation of rules & enforcement
  - Increased consumer control
  - Cutting red tape
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- Regulation vs Directive
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- When will the Regulation become law?

# Territorial scope, one stop shop & fines

- Controllers not established in the EU
  - processing personal data of data subjects residing in the EU
  - where activities are related to:
    - offering of goods or services to data subjects residing in the EU; or
    - the monitoring of their behaviour
- Single EU regulator for all EU processing for controllers/processors with a main establishment in one EU member state
- Sanctions – up to 2% of worldwide turnover

# Data handling & accountability

- Best practice becomes law
- Compliance systems, documentation & audit
- Privacy by design & privacy impact assessments
- Security risk assessments
- 24 hour data breach notification requirements
  
- Mandatory Data Protection Officer to make it all happen
  
- Up to 2% fines for failure to implement most of these provisions

# Export from the EU

- Export without regulators
  - EU Model Clauses – no further approvals
  
- Export with regulators
  - Binding Corporate Rules recognised and process streamlined
  - BCRs for processors
  - Non-standard contractual clauses

# New rights

- Right to be forgotten
  - Enhanced version of existing rights
- Data portability
  - Conflict with IP and trade secrets
- Oversell & consumer expectations
- Difficulty in dealing with exemptions

# Processors

- Pre-Regulation position: liability all with controller (except by contract)
- Post-Regulation position: responsible with controller for evaluating and implementing security
- Liable to data subjects & regulator for breaches
  
- Impact on service provider contracts



# Conclusion

- Includes positives and negatives for all stakeholders
- Best practice becomes law
- Changes to administration of EU data protection system
- Sanctions – the price of non-compliance will rise

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