

# Overview – Status of European Union Data Protection Law Reform (Aug. 2015)

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## Overview

- General Background
- Where are we now in the process?
- Key changes under the new regime



## General Background



## Current Legal Framework

- **Directive 95/46/EC** of the European Parliament and of the Council of **24 October 1995** on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- **Directive 2002/58/EC** of the European Parliament and of the Council of **12 July 2002** concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [updated 2009]



## Background

- Directives need to be implemented into national law by each EU Member State
- Directive 1995/46/EC is unchanged since 1995
- Technology has significantly evolved
- European law has significantly evolved



# Charter of Fundamental Rights of the European Union

## **Article 8 – Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority



Where are we now in the process?



## European Commission Proposal (January 2012)

- Proposal for a “**Regulation** of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)”
- Proposal for a “**Directive** of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data”





## Position of European Parliament and the Council

- **March 12, 2014:** Vote of the European Parliament; adoption of a compromise text (621 votes in favor, 10 against, 22 abstentions)
- **June 15, 2015:** Council agrees on a general approach on the general data protection regulation



## Next Steps

- So-called „**trilogue**“ between European Commission, European Parliament and Council has started in June 2015
- Parties hope to reach agreement by the **end of the year 2015**
- Final text would then be **published in the Official Journal** in Q1/2016 or Q2/2016
- Legal effects: (expected) two years after publication in the Official Journal (**2018**)



## Key changes under the new regime



## Key Changes

- Text will be available in all official languages of the European Union; each language version has equal value
- Regulation, not directive = identical legal text for the entire European Union
  - But: the draft Regulation contains a significant number of express permissions for EU Member States to introduce additional/specific national provisions
  - European Commission will have the right to pass “implementing acts” with additional details



## Key Changes

- Applicability of the Regulation: jurisdiction and territorial scope
- Enforcement, sanctions – significant fines of up to the greater of €100 million or 2-5% annual worldwide turnover
- Role of the data protection authorities – “One Stop Shop” principle (with exceptions)
- Need for accountability programs
- Profiling
- Data Breach Reporting



## Key changes

- Impact on outsourcing agreement – controller-processor agreements
- Cross-border transfers
- Fate of the Safe Harbor regime



Thank you for your attention



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