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Newsletter

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The General Data Protection Regulation

Simplification of the Establishment of Companies

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THE GENERAL DATA PROTECTION REGULATION - AN OVERVIEW

Verveniotis Law Office
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After long discussions and negotiations for over four years, the new EU legal framework on data protection was finally adopted.

It took the form of a Regulation, numbered 2016/679 (henceforth: GDPR) and was published in the official journal of the EU on May 4th 2016. However the GDPR will not apply before May 25th 2018 which allows the involved parties (member states, national authorities and companies) to prepare for the implementation of the new legal framework.

Once the GDPR comes into force, the current Data Protection Directive 95/46/EC is repealed and the new legal framework will be directly applicable to all member states without the need of additional national legislation. It should be mentioned that directive 95/46/EC has been implemented differently by EU Member States which resulted in the fragmentation of national data protection laws within the EU. The GDPR aims primarily to harmonize and expand

the EU data protection law. Whether and to which extend the above mentioned goals of the Regulation will be achieved remains to be seen, since the new act, though a regulation, grants to the member states the liberty to deviate on specific matters from the Regulation.

It should be mentioned that national regulatory authorities have probably already dealt with issues caught by the Regulation. For example, the Greek Data Protection Authority has recently ruled on the "right to be forgotten" and the transfer of biometric data outside the EU (Decisions nr. 82-84/2016, 86/2016).

Most significant developments of the GDPR include:

- The GDPR expands the territorial and material scope of EU data protection law. It applies to both controllers and processors established in the EU, but also captures controllers and processors outside the EU, who offer goods and services to or monitor EU citizens. In this case a representative in the EU has to be appointed. Compared to the current regime, more overseas organizations are expected to be captured by the GDPR.
- It further expands the definition of personal and sensitive data which now explicitly include, among others, IP addresses or genetic and biometric data.
- More strict consent requirements are provided for. The data subject's consent must be freely given and the subject must have a real, genuine choice to refuse or withdraw it. Especially for sensitive data the consent must be specific and explicit. Existing consents may still be valid if they meet the new requirements. The member states may provide for more specific rules for the granting of consent of the data subject in the frame of employment contracts. When online services are provided directly to a child under 16 years old, a parental consent is required for the processing of the child's personal data. Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.
- One of the main goals of the GDPR is to strengthen the individuals' rights on their personal data. Among others, the GDPR provides for the easier access of the individual to his/her personal data, the correction right of wrong data, the right to object to the processing of data for marketing purposes, the "data portability" from one service provider to another and the "right to be forgotten" which allows individuals to ask for deletion of their personal data.
- The GDPR imposes for the first

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time direct statutory obligations on data processors. This means processors are subject to direct enforcement by supervisory authorities, serious fines, and direct liability to data subjects for any damage caused by breaching the GDPR. This is a significant change as processors currently only have to comply with the terms of the processing contract with the controller.

- The existing information obligation to the data subject is expanded. Data policies have to be reviewed to ensure compliance with the new requirements of the GDPR.
- The general notification requirement is abolished under the new regime. However, data controllers have to consult the DPA prior to the implementation of any data policies, when a high risk processing is indicated by a data impact assessment and measures to mitigate the risk may need to be taken.
- A Data Protection Officer has to be appointed by all public authorities as well as by companies that perform high risk data processing.
- The introduction of the 'One-Stop-Shop' is one of the innovations of the GDPR. In cases of multiple establishments or cross-border processing in the EU, controllers and processors will be in principle reg-

ulated by the authority where they have their "main establishment". Other "concerned" authorities may be also involved if the criteria of the Regulation are met.

- Regulatory authorities are empowered to impose high administrative fines on both data controllers and data processors according to a mechanism resembling the anti-competitive penalty scheme. Fines may be imposed instead of, or in addition to measures that may be ordered by the authorities. Fines of up to €10,000,000 or, in the case of undertakings, 2% of their annual global turnover of the preceding financial year, may be imposed. For serious infringements the fines may reach €20,000,000 or, in the case of undertakings, 4% of their annual global turnover of the preceding financial year, whichever is the higher. Nature, gravity and duration of the infringement have to be taken into consideration when imposing the fines. Regulatory authorities also enjoy wide investigative powers including, among others, the power to undertake on-site data protection audits.
- The GDPR explicitly approves binding corporate rules for data controllers and data processors in order to allow legitimate intra-group data transfers.
- The GDPR retains the existing

transfer mechanisms, but provides for additional mechanisms, in particular, approved codes of conduct and certification schemes. Data transfers to countries outside the EEA continue to be prohibited, unless that country ensures an adequate protection level.

- Data subjects can claim from both controllers and processors compensation for pecuniary or non-pecuniary damage suffered as a result of a breach of the GDPR. Contract including provisions for the processing of personal data will need to be reviewed to mitigate the above mentioned risk of claims from data subjects.
- An independent European data protection board ("EDPB") will issue opinions and guidelines ensuring prompt enforcement of the GDPR and will also report to the Commission.

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SIMPLIFICATION OF THE ESTABLISHMENT OF COMPANIES

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The new Law 4441/2016 (Government Gazette A 227, 06.12.2016) brings some significant changes to the Greek corporate law, mainly regarding the procedures for the establishment and conversion of Greek companies.

The primary goal of the new law is to further improve the one-stop-shop procedure that was introduced with the Law 3853/2010, to simplify the procedures for the incorporation and conversion of companies and to reduce accordingly time and costs for the involved parties.

Brief overview of the key amendments:

1. Under the new law the incorporation of Societes Anonymes and Limited Liability Companies may be effected without execution of a notarial deed, provided that the parties use the model Articles of Association to be stipulated by the law. Said model Articles of Association will be the content of a ministerial decision to be issued and will be made accessible over the website of the competent authority.
2. Another significant innovation of the new law is the "e-One Stop Authority". Through this electronic platform, the interested parties will be able to proceed with the incorporation of a company remotely, without the interference of any natural person, such as the Notary Public or officers of GEMH (General Commercial Registry), provided that the above (under 1.) mentioned model Articles of Association will be used. Through this electronic platform the interested parties will be able to submit all necessary documentation. Following the submission and the review conducted by the authority, the parties will receive electronically the certificates proving the incorporation of the company. Tax certificates of the founders of the company are no more required at this stage. The registration of the company with the social security organizations and the tax authorities will be conducted by the same e-Authority.
3. The new law introduces a "unified" fee for the incorporation of the company which covers all current fee notes. Parties opting for the e-one stop procedure are granted a good discount and will need to pay only 30% of the standard unified fee. In order to make the e-procedure more appealing, the law abolishes even this reduced unified fee during the first year of its implementation.
4. Finally the new law stipulates how an unlimited partnership may be converted into a limited partnership. This can be effected either through the entry of a new limited partner or by conversion of one or more general partners to limited partners following a unanimous decision of the partners. In the last case, the joint liability of the unlimited partner survives for a period of 5 years from the conversion, unless the partnership's creditors have explicitly and in written given their consent to the conversion.

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