

# Liechtenstein's GDPR adaptation law now in force

*PL&B* talked to Liechtenstein's Data Protection Commissioner about the specifics of the new law, applicable since 1 January 2019.

**M**arie-Louise Gächter, Data Protection Commissioner, Liechtenstein, explained that her country is a member of the European Economic Area, and the data protection law has therefore been adapted to conform with the GDPR.

"Liechtenstein's new Personal Data Act was adopted by Parliament on 4 October 2018 and entered into force on 1 January 2019. The Personal Data Ordinance specifying further details with regard to data processing was adopted on 11 December and entered into force on 1 January 2019," she said.

"In order to avoid a gap between 20 July 2018 and 1 January 2019, a transitional law was adopted in June 2018, which entered into force on 20 July 2018. Its main aim was to enable the national supervisory authority to exercise the powers and to perform the tasks conferred on it in accordance with the GDPR, except for imposing administrative fines pursuant to Article 83."

## How was the previous data protection law amended to comply with the EU Data Protection Regulation (GDPR)?

"There are various differences between the previous and the amended data protection law. The new law supplements the GDPR in light of the various opening clauses contained in the GDPR. Moreover, it brings national law in line with the so called 'Police' Directive on law enforcement."

"Although Liechtenstein's data protection law is partially modelled upon the German Federal Data Protection Law, it has abstained from incorporating rules on data protection in an employment context, on thresholds and criteria for the requirement to appoint a DPO or with regard to media. Similar to Germany, data subject rights, such as right of information,

right of access and right to be forgotten, are further restricted. For example, the right of access is restricted if the personal data is only stored for compliance with statutory or contractual retention obligations or if the personal data only serves the purpose of data security and data protection control. Right of erasure does not apply if erasure requires an unreasonably great effort due to the specific type of storage."

"Moreover, the new law has replaced the requirement of the previous authorisation of a video surveillance system by previous notification, and sets forth regulations allowing data processing regarding research, in particular genealogical research which has a long-standing tradition in Liechtenstein."

## Have any new regulations been adopted?

"In addition to the aforementioned Data Protection Law and Ordinance the only new regulation that has been adopted and entered into force on 1 January 2019, is an Ordinance on the disclosure of personal data by municipalities in Liechtenstein to third parties."

"Furthermore, more than 120 national laws covering a wide range of topics such as banking law, financial markets law or the law on the prevention of money laundering and financing of terrorism have been analysed and adapted to the GDPR. All these amendments entered into force on 1 January 2019."

## Are any additional new regulations being planned?

"For the time being, there are no additional regulations planned. However, there are still some national laws that need to be adapted to the GDPR."

## Have there been any issues adapting Liechtenstein's data protection law to

## the GDPR, for example, in terms of national derogations?

Gächter explained that the national Data Protection Law permits the processing of sensitive data, supplementing Article 9 Sec. 2 (b), (g), (h), (i) and (j) GDPR; lays down the precedence of professional secrecy over the rights of data subjects (see below); provides for derogations regarding family history and genealogical research as well as archives.

## Is there any conflict with other laws?

"During the drafting of the national Data Protection Law and parliamentary debates, there were worries that legal privilege, confidentiality and professional secrecy were in danger due to the extended rights of the data subjects. Consequently, Art. 2 and 30 of the Data Protection Law lay down that the secrecy – under certain conditions – takes precedence over the rights of subjects."

## Liechtenstein is independent and located between Austria and Switzerland. Does Liechtenstein derive any inspiration from their national data protection laws or the way that they are implemented in these countries?

"As indicated above, the government envisaged in 2017 to model the national Data Protection Law on the German Federal Data Protection Law. During the preparation of the draft and the subsequent parliamentary debate, however, Liechtenstein's draft law was adapted to take into consideration the country's specific economic and societal situation. Hence, the law both contains several autonomous regulations and follows in other parts the German law. The advantage of the close links between Liechtenstein's law and the German Federal Data Protection Law is that the decisions of German supervisory authorities and the jurisprudence of German courts can be a source of inspiration for Liechtenstein's supervisory authority.

However, their decisions do not bind Liechtenstein's DPA and the latter is free to take their own decisions."

"Although in general Liechtenstein has close links with Switzerland, their national Data Protection Law was no inspiration as Switzerland is not an EEA member state and their Data Protection Law is still undergoing an amendment."

**What is the impact of the GDPR and the new law in Liechtenstein for example in terms of subject access requests, data breach notifications and complaints?**

"We do not have detailed information on subject access requests addressed to companies in Liechtenstein. There have been 21 data breach notifications to our office. We have received 63 complaints by citizens from Liechtenstein and ten from German nationals against companies in Liechtenstein. In addition, there have been 1,945 requests for advice by companies and individuals (between 20 July 2018 and 20 May 2019)."

**Are there any other issues?**

"Since July 2018, the main focus of the DPA's activity has been on offering guidance. That is, promoting public awareness and an understanding of all the aspects from the data subject or citizen perspective (for example, making sure they understand data subject rights, data processing risks when, for instance, granting consent and so forth) as well as offering guidance to both processors and controllers with regards to their duties and obligations under the GDPR."

"In addition to 50 presentations at diverse events organised either by the DPA or associations such as the Insurance Association, Medical Association or Trade Association, the DPA cooperated closely with the two universities in Liechtenstein as well as the media."

**Has Liechtenstein received any applications for Binding Corporate Rules either as the lead authority or as a supporting Data Protection Authority?**

"Two international companies have announced that they are planning to submit an application. In both cases, we would be the lead authority."

**Have you received any complaints that are cross border in nature and have to be referred to the European Data Protection Board (EDPB)?**

"We have received ten complaints from German nationals complaining against one company in Liechtenstein. The investigations are still on-going; the first decision will be notified to the controller by the beginning of July."

**What is your perspective working alongside, but outside, the European Union?**

"Liechtenstein is a member of the European Economic Area and the European Free Trade Area. The GDPR is applied in Liechtenstein the same way as it is in the European Union. The supervisory authorities of the EEA States are also members of the EDPB with regard to GDPR related matters but without the right to vote and being elected as chair or deputy chairs. However, we appreciate that EEA member states have the right to express their positions on more or less all items discussed and/or voted. What is much more important for us is that we have access to all the processes and documents through access to the EDPB's communication tools."

"In general, being part of the 'European data protection regime' is considered a huge advantage. With many businesses and services in Liechtenstein operating across borders, international consistency around data protection regulations is crucial both to businesses and organisations as well as to consumers and citizens. Even if a third country is able to provide an 'adequate' level of protection in order to allow their businesses to continue to share personal data with the EU and EEA countries, it is not the same as being an active part of the European data protection framework. If we look at our neighbouring country, Switzerland, many businesses are not aware of their obligations under the GDPR according to Art. 3. And we also receive a great number of requests from private and public institutions in Liechtenstein regarding their data transfer to Switzerland. In short, even though there are options for third states to be considered as adequate regarding their standard of data protection, we consider that taking part fully in the European

data protection regimes is a huge advantage. It allows us to take part in the decision-making (although we do not vote), to have insight into the processes and cooperate closely with other DPAs and the EDPB."

"We attend all plenary meetings of the EDPB, however due to the size of our team (eight persons) we are not able to attend the meetings of all the subgroups. With the entry into force of the GDPR we decided that our primary aim is to be a very active supervisory authority at the national level, and take on a rather observatory role at the European level. As of this year we endeavour to be more active at the European level as well, especially with regard to giving feedback to draft guidelines and also participate in the working group on Binding Corporate Rules. We are also very interested in participating in preparing guidelines on Blockchain technology which is a topic of utmost interest in Liechtenstein."

**In an ideal world, from a data protection perspective, would Liechtenstein be a full member of the EU?**

"From the data protection perspective, I would say that a great number of Liechtenstein's private and public institutions are exemplary with regard to implementation of the GDPR. Moreover, the small size of the country allows the supervisory authority to interact closely with processors, controllers and the citizens. In Liechtenstein, implementation of the new data protection regulations is considered as a joint project between the supervisory authority and all stakeholders involved. It is not something that is forced on the institutions processing personal data. In conclusion I would say that Liechtenstein would be a full member of the EU as far as data protection is concerned."

**INFORMATION**

The 2018 Act is available in German at [www.datenschutzstelle.li/rechtsgrundlagen/nationale-gesetze](http://www.datenschutzstelle.li/rechtsgrundlagen/nationale-gesetze). The texts of the Act and the Ordinance will be available in English on the DPA's website in the early autumn.



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## Brazil's GDPR-style DP law is a game-changer

Data Protection Laws are like waiting for a London bus – you wait ages for one and then they all come at once! **Felipe Palhares** and **Robert Bond** of Bristows analyse Brazil's new law.

The EU General Data Protection Regulation applied fully on 25 May 2018 and then there have been similar laws announced in California, Washington State, Kenya, Bahrain, Algeria, Panama, Lebanon, Barbados, Pakistan and many more. South Africa,

Russia and Japan and some other countries have updated their laws and lean heavily on GDPR principles and those of Convention 108....and then there is Brazil.

On 14 August 2018, Brazil

*Continued on p.3*

## 'On again, off again' consultation for Canadian policy on data transfers

Canada's privacy protection regime faces pressures for modernisation in light of the GDPR. **Colin Bennett** from the University of Victoria, Canada reports.

It has been an interesting couple of months in the world of Canadian privacy protection policy, which signals some fundamental shifts in strategy and approach by the

Office of the Privacy Commissioner of Canada (OPC) and the Canadian federal government.

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INTERNATIONAL  
**report**

ISSUE NO 159

JUNE 2019

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Middlesex HA5 5NE, United Kingdom**Tel: +44 (0)20 8868 9200****Fax: +44 (0)20 8868 5215****Email: info@privacylaws.com****Website: www.privacylaws.com****Subscriptions:** The *Privacy Laws & Business* International Report is produced six times a year and is available on an annual subscription basis only. Subscription details are at the back of this report.

Whilst every care is taken to provide accurate information, the publishers cannot accept liability for errors or omissions or for any advice given.

Design by ProCreative +44 (0)845 3003753

Printed by Rapidity Communications Ltd +44 (0)20 7689 8686

ISSN 2046-844X

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**“ comment ”**

## Happy Birthday, GDPR

Now, one year since the GDPR became applicable, can we move on to think about other issues, such as e-Privacy? Not quite – while GDPR compliance is an ongoing task, companies have not yet managed to fully adapt to some of its provisions. Read on p.7 which aspects have been the most troublesome for companies.

Individuals have woken up to use their rights – DPAs have received 144,000 queries and complaints since May 2018. Telemarketing, promotional e-mails and video surveillance are among the most complained about issues.

By early June, three EU Member States still had not brought the GDPR into national legislation (p.10). In this issue, we publish a table of the new EU laws, together with the European Economic Area, Jersey, Guernsey and the Isle of Man to help you keep track of the changes.

In Canada, a debate has started whether and how the current law could be amended in light of the GDPR (p.1). In Brazil, the new law, again affected by the GDPR, was adopted in 2018 but will not enter into force until 2020 giving organisations much needed time to put their house in order (p.1). But what will the US response be to the changing international data protection legislative framework? One option could be to expand the Federal Trade Commission's rulemaking powers, Professor Daniel J. Solove says (p.16).

On the international front, the OECD is revising its privacy principles. Read Professor Graham Greenleaf's analysis of whether the revisions are going in the right direction, and what their impact may be (p.18). At the United Nations, the Special Rapporteur on the Right to Privacy has reported to the UN Human Rights Council on 'Privacy and Personality' which includes an interesting analysis by Dr Elizabeth Coombs on whether privacy rights depend on gender (p.24).

We take pride in bringing you news from all over the world, regardless of the size of the jurisdiction. In this issue, we have an interview with the Data Protection Commissioner of Liechtenstein (p.28), and a report on the new law in the Czech Republic (p.26).

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Laura Linkomies, Editor  
PRIVACY LAWS & BUSINESS

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