



PRIVACY THIS WEEK

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EU: Commissioner Reding Defines Future of Data Protection

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Two main texts proposed: Regulation to address business activities, Directive to deal with exchange of data between police and judicial authorities.

- Fines of 2% of global turnover proposed for serious data breaches**
- Reduction of red tape for small and medium companies**
- One DPA for one company creating a 'one stop shop'**
- Possible scrapping of Safe Harbor Scheme**

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Commissioner Reding unveiled long-awaited proposals to amend the EU Data Protection Directive on 25 January 2012, highlighting, in particular, the need for companies and for citizens to deal with one DPA, and setting 'dissuasive' penalties at 2% of global turnover for serious data breaches.

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Several exemptions for small businesses to eliminate administrative burden have also been introduced, while the EU/US Safe Harbor Scheme has been removed from the proposal.

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Referring to the controversial penalties, Commissioner Reding said that "nothing has been watered down, there has been a lot of lobbying and a lot of ideas [in the November draft, which featured a 5% penalty], but I stuck to my pipeline and my ideas." The proposal states that a company would not be fined - but warned - for a first breach of the law. For a second breach, fines would be imposed. Account would be taken of the seriousness of the breach, and depending on whether the breach is negligent or intentional. Bridget Treacy, Partner at Hunton & Williams, told DataGuidance: "Increased enforcement powers will ensure that data protection is taken seriously. Organisations will need to think strategically about data protection compliance. In the UK, companies are likely to lament the inevitable loss of a more pragmatic approach to enforcement."

The proposal does not feature the Safe Harbor option for data transfers, but instead states that the Commission will issue a report assessing the functioning of the framework. In a press release issued on the same day, Peter Hustinx, the European Data Protection Supervisor, "expressed regret" that the Commission does not propose stricter rules for the transfer of personal data outside the EU, and that the DPAs are not given mandatory powers to effectively control the processing of personal data in this area.

Under the proposals, small and medium businesses would not be required to appoint a Data Protection Officer, and would only be required to carry out impact assessments for very risky activities, such as the processing of genetic data and children's data. They would also need to create documentation on how they manage their data processing activities,

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Address: 17 The Timber Yard, Drysdale Street, London, N1 6ND, UK | Phone: +44 (0)20 7012 1380 | Email: info@dataguidance.com