

Privacy & Data Protection

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- Data breach notification rules take effect in Australia, p.19
- Government publishes new fees format, p.20

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Welcome clarifications in breach notification guidance

The Article 29 Working Party has released updated guidelines on breach notifications under the General Data Protection Regulation.

The guidelines were first issued in October 2017 and caused concern with various provisions, including one described as ‘entirely impractical’, which said that controllers should be considered aware of a processor personal data breach once the processor is aware of it.

The revised guidelines clarify that controllers are only considered ‘aware’ of a breach which has

occurred on their supply chain when the relevant supplier (processor) informs the controller of the breach.

From the time of this ‘awareness’, the clock starts ticking to notify the relevant supervisory authority under Article 33(1) GDPR. Controllers must notify ‘without undue delay and, where feasible, not later than 72 hours after having become aware.’

The guidelines also clarify that, with respect to the obligation on processors to notify controllers of personal data breaches ‘without undue delay’,

the processor should notify when it has established that a breach has occurred. The processor does not need to assess the likelihood of risk arising from the breach, as this is a requirement for the controller.

Legal experts at DLA Piper commented “in combination with the clarification that controllers are not automatically deemed to be aware once the processor is aware, this is likely to result in slightly softer notification obligations on processors in supply chain agreements, moving away

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UK PM’s ‘ambitious’ data protection plan not unreasonable, say experts

The UK Prime Minister, Theresa May, has cited data protection as one of “five foundations” that will underpin the future relationship between the UK and the EU in her latest speech on Brexit.

As part of her ambition for the “deepest possible partnership”, she said that the “free flow of data is critical for both sides”. She added that “the UK has exceptionally high standards for data protection ... and

we want to secure an agreement with the EU that provides the stability and confidence for EU and UK businesses and individuals to achieve our aims in maintaining and developing the UK’s strong trading and economic links with the EU.”

The Prime Minister indicated that she wanted more than just an adequacy decision for the UK (whereby personal data can flow freely from

the EU 27 to the UK) but also an ongoing EU role for the UK’s data protection regulator and effective representation for UK businesses under the ‘one stop shop’ mechanism.

Commenting on the PM’s plan, Hogan Lovells Partner Eduardo Ustaran said that “the adequacy-plus aim is certainly bold and ambitious. But this is not

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