



A STEP CLOSER: FUNDAMENTAL DATA PROTECTION CHANGE

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Summary

The data protection landscape is at a crossroads – and organisations across all market sectors are waking up to the fact that change will inevitably impact the way they do business. As a leading email and file encryption services provider, Egress Software Technologies recognises that customers need to ensure that effective data security policies and solutions are in place to avoid Data Protection Act (DPA) compliance challenges and potential data breaches. Through its strategic partnership with Regulatory Strategies, experts in providing information assurance, compliance and policy consultancy to global organisations, Egress is working to help customers mitigate information security risks, while at the same time, not creating barriers to business as usual.

Here, Regulatory Strategies Founder and Director Mike Bradford explains what proposed changes in data protection legislation from the EU will mean for organisations.

Significant changes

It is inevitable that there will be change – and significant change at that – to the data protection laws we have become familiar with in the UK and Europe under the 1995 Data Protection Directive. If the regulation remains as currently drafted, businesses in some member states, including the UK, will face a more bureaucratic, detailed and prescriptive data protection regime - and one that even some regulators will take issue with. UK Deputy Data Protection Commissioner David Smith has commented on the proposed EU data protection reforms, stating: “Put simply, the proposals could prove to be one of the biggest changes to data protection this country has ever seen.”

The Civil Liberties, Justice and Home Affairs Committee’s report on the data protection regulation was published in January 2013, proposing dramatic restrictions on the use of data, with huge implications for companies across all sectors. Although the report does not represent the final version from the European Parliament, it gives the clearest indication yet of how things are shaping up, strongly supporting the Commission’s aim to strengthen Europe’s data protection rules and appearing to go even further than the proposal published by EU Justice Commissioner Viviane Reding in January 2012. The report contains 350 proposed amendments that would increase data subjects’ rights by:

- Confirming that explicit consent will be the rule;
- Extending the compulsory data protection officer requirement;
- Further tightening the proposal’s scope of non-EU-based controllers;
- Restricting the ‘legitimate business interest’ exception; and
- Strengthening the sanctioning system.

Negotiations involving the European Council, Parliament and Commission have now started, with the aim of reaching a political compromise by the end of this year and adopting the new regulation before the European elections in 2014. Moreover, as we have a regulation rather than a directive, there will be no room for ‘interpretive drafting’ at member state level. The regulation must be enacted as written, unlike current member state data protection (the Data Protection Directive), which it is based on but doesn’t replicate verbatim.

Make sure the organisation knows what is coming

Do not just leave it to the data protection officer to monitor the changes in legislation - this is a strategic boardroom agenda item, as the regulation will impact every area of business, both in terms of governance requirements and potential bottom-line impacts. The best approach is to act now: make sure that you already comply with what the data protection regulator and your customers would expect under current legislation. Ask yourself whether you have data protection policies in place, an up-to-date privacy policy compliant with the new cookie regulations, an incident management plan, a retention strategy, as well as robust contracts with third party suppliers that include data protection clauses. Furthermore, are you and your staff

equipped to respond promptly to a subject access request? Do all staff fully understand their data protection responsibilities and have they received adequate training? If the answer is 'no' to any of these, then it is unlikely that the regulator's expectations would be met, and when the new regulation adds to our ever-growing compliance requirements, there will be a legal necessity to put them into effect.

Conclusion

Inevitably despite these legislative changes, data breaches will continue to occur due to both lack of end-user understanding and incorrect systems being put in place. Yet while information security solutions must tick all the right boxes, they also need to be easy to use, otherwise individuals will bypass them as they strive to accomplish the task in hand. Partnering with Regulatory Strategies, Egress offers customers email and file encryption services that are designed to be simple to use, thus removing barriers to secure data sharing, rather than creating them. As a one-click encryption solution, Egress Switch helps organisations ensure they are compliant and in control, with employees taking advantage of a simple method for securing information that doesn't hinder them from carrying out their daily work processes.

About Us

Egress Software Technologies

Egress Software Technologies is a leading provider of email and file encryption services, offering on-demand data security to enable businesses to share confidential information with third parties.

Used by public and private sector organisations, the unique infrastructure delivers 'follow the data' control, ensuring that only authorised recipients access confidential information.

Regulatory Strategies

Regulatory Strategies are acknowledged data regulation experts, providing UK and international clients with highly practical and commercially focused consultancy around regulatory and consumer affairs, compliance and data protection to balance and minimise risk, while at the same time driving bottom-line competitive advantage and market differential.

Regulatory Strategies provides more detailed commentary of the impact of these changes on their website (www.regulatorystrategies.co.uk). Alternatively, contact Mike Bradford (mike.bradford@regulatorystrategies.co.uk) or Helen Lord (helen.lord@regulatorystrategies.co.uk) if you would like to discuss your current approach to data protection or how the regulation will impact on your business.