

# LEGAL update

02/18

THE NEW EU REGULATION ON  
GENERAL DATA PROTECTION 2016/679  
("GDPR")

  
KINANIS  
LAW FIRM

## A. INTRODUCTION

Globalization has rapidly and radically increased the ease in which data may be collected, stored and transmitted. The current Directive (95/46/EC) is out dated and does not correspond to today's needs. Various reasons has led to the increased need for a united legal framework in relation to the protection of personal data, including the rapid technological developments, the excessive use of the internet, the use of internet banking, social media and more importantly the ease in which personal data are now made publicly available.

The new regulation on general data protection, 2016/679 (the "GDPR") has been adopted by the European Parliament in April 2016 and will come in full force and directly applicable to all Member States on the 25<sup>th</sup> of May 2018. GDPR will abolish any other legislation and aims to set a unified legal framework in order to ensure adequate protection of physical persons in relation to the processing of their personal data, in conjunction with the rapid technological developments.

GDPR covers data processed both by automated means and data collected and stored as part of non-automated filing systems/ manual systems.

## B. SCOPE OF GDPR

GDPR applies when:

- (i) the controller or the processor is established in the European Union (the "EU"), regardless of whether the processing takes place in the EU or not;
- (ii) the data subjects are in the EU, the controller or processor is not established in the EU and the processing activities relate to offering goods or services or the monitoring of the data subject's behavior which takes place within the EU; and
- (iii) the controller is not established in the EU but in a place where Member State law applies by virtue of public international law.

This is arguably a great change, as GDPR now applies to all companies processing the personal data of data subjects residing in the European Union, regardless of the company's location.

### C. KEY CHANGES

GDPR creates a uniform legal basis by promoting the same duties and liabilities in all EU member states. GDPR enhances the existing rights of data subjects/individuals, but also introduces new ones, such as:

- The right to be provided with information;
- The right of access;
- The right of rectifications;
- The right to be forgotten;
- The right to object;
- The right to data portability;
- The right to object to automated decision-making, including profiling;
- The strict requirement of the existence of a valid consent by the data subject/individual.

Consent is considered valid only if it is freely given, informed, specific, unambiguous and clear either in writing or oral with regards to the processing of personal data related to the data subject/individual.

### D. APPLICABILITY / NEXT STEPS

GDPR is applicable to government organizations, public and private companies which collect, process and transmit personal data related to their clients, employees, associates etc.

Organizations and companies, while ensuring compliance with the basic principles of GDPR, must also:

- Assess their current data systems, policies and procedures;
- Identify risks involved with such current policies and procedures;
- Ensure that personal data are collected for a specific reason;
- Ensure that such personal data are processed only for the reason they were collected;
- Ensure that reporting of any breach of GDPR is communicated to the Commissioner for Data Protection;
- Store such personal data only for the minimum period required, always having received the consent of the data subject/individual;
- Adopt internal policies and implement measures such as minimizing the processing of personal data, pseudonymising personal data, enabling the data subject/individual to monitor the data processing etc.

## E. DATA PROTECTION OFFICER

An organization, public or private companies are obliged to appoint a Data Protection Officer shall be appointed where such organization/company (the controller and the processor) fall within one of the three following provisions of GDPR:

- (i) it is a public authority or body, except for courts acting in their judicial capacity;
- (ii) their core activities require **regular and systematic monitoring** of data subjects on a **large scale**; or
- (iii) their core activities consist of processing on a **large scale of special categories of data** and personal data relating to criminal convictions and offences.

The Data Protection Officer assumes the tasks of advising, monitoring internal compliance and cooperating with the supervisory authority and is bound by secrecy and confidentiality.

## F. FINES

It is important to stress that GDPR provides for **severe administrative fines** in the event of non-compliance with its strict provisions. Breaches of some provisions by businesses, could lead to fines of up to €20 million or 4% of global annual turnover for the preceding financial year, whichever is the greater. For other breaches, the authorities could impose fines on companies of up to €10 million or 2% of global annual turnover, whichever is greater. The organizations, public/private companies must make substantial efforts to comply with the provisions of GDPR as the severe fines imposed for non-compliance are comply are warning.

## G. CONCLUSION

The GDPR aims to increase the level of control over the information related to data subjects and protect them from privacy and data breaches. It also aims to ensure that data controllers and processors are safe custodians of data through promoting behaviour change. All companies and organizations must now examine the way they collect, store and process personal data and put in place procedures, policies and practices in order to ensure compliance with the scope of GDPR and avoid the severe consequences and fines provided for by GDPR.

## H. HOW KINANIS LLC CAN ASSIST

Our office may advise and guide you on all matters related to personal data protection, privacy and confidentiality and our GDPR team of professionals can assist you in evaluating the Data Protection implication of the above changes on your firm.

In particular our office may:

- Liaise with the Data Protection Commissioner and other regulators in relation to matters connected with GDPR and the business of the client;
- Provide legal opinions in relation to data protection matters in light of the GDPR;
- Drafting model clauses and contracts for your business in light of the GDPR;
- Carrying out a privacy impact assessment for your business, as required under GDPR, to evaluate the nature and sensitivity of the data processing operations you currently carry out;
- Monitor and advise on regulatory developments.

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## Our Firm

**Kinanis LLC**, a law and consulting firm, is one of the leading and largest business law firms in Cyprus and advises for over 35 years the international investor and private clients on all aspects of law, tax and accounting.

Kinanis LLC absorbed the business of its shareholders which are in the legal and consulting profession since 1983, with local and international dimensions.

Experience and practice over the years brought forward the need for transformation from a traditional law firm to a more innovative multidisciplinary firm providing a full range of services combining law and accounting with the extensive expertise in corporate and tax advice to ensure that our clients will obtain the best possible spherical advice adopting the principle as to the services offered “All in one place”, so that the client will find a quick, correct and efficient solution to its daily legal, accounting and tax issues in a trustworthy environment.

This combination of legal, accounting and tax services through our well qualified personnel and our involvement and participation in international transactions over the years, have established our firm as one of the key players in the field. Our involvement in international financial transactions has also provided us with the extensive expertise in representing groups, corporations, funds as well as the private client.

The firm is staffed with around 80 young, energetic and ambitious professionals, including lawyers, accountants and administrators who provide prompt, efficient and high quality services and who are capable of meeting the current demanding challenges of the local and international business environment.

We always look to give solutions in a simple and as possible quick way focusing on the needs of each client trying to anticipate the issues before becoming a problem.

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