

GDPR: The impact for airlines

The EU General Data Protection Regulation (GDPR) comes into force in May 2018 and will have a far-reaching impact on airlines. ERA's Caroline O'Sullivan examines the implications for members

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The new EU data protection framework was adopted on 8 April 2016. (EU) 2016-679, the General Data Protection Regulation (GDPR) will replace the current Directive 95/46/EC and will be directly applicable in all member states. The regulation takes into account digital and online platforms not addressed by its predecessor. It will take effect on 25 May 2018 and marks a milestone in data protection laws as the EU takes a major step towards a digital single market and harmonising data protection across member states. The regulation is complex and far reaching and does contain some burdensome requirements for airlines, many of which will take time to prepare for, as well as a more immediate impact on ERA members.

Lack of harmonisation

Since its proposed text in 2012, the GDPR has garnered much attention, not least for the fact that it is the largest piece of EU legislation in 20 years. The lack of harmonisation across member states has become vexing for the aviation sector in particular, given its cross-boundary nature and the increasing flow of data.

The Article 29 Working Party (WP29), an independent European advisory body, which provides expert opinions on questions of data protection, has recently published guidelines and frequently asked questions regarding the implementation of the GDPR, including guidelines on Data Protection Officers (Section 4 of the Regulation), the right to 'data portability' (Article 20 of the Regulation) and guidelines for identifying a controller or processor's lead supervisory authority.

The aim of the guidelines is to assist processors and controllers with complying with the law, clarifying the role of the Data Protection Officer (DPO) and offering best practice solutions, based on experience gained in some EU member states. The WP29 intends to monitor the implementation of the guidelines and potentially complement them with further solutions in due course. Stakeholders had the opportunity to provide comments to the WP29 on these guidelines until the end of January 2017, and this is something ERA will continue to monitor.

Airline advice

The focus for airlines within these guidelines would be the question of appointing a DPO, debated during an IATA seminar in November 2016, with the outcome that airlines are implicated by Article 37(1) (b) if 'the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale'.

The explanation given in the guidelines of 'core activities', 'large scale' and 'regular and systematic monitoring' need little clarification in terms of airline obligations. An example of the medical sector used, demonstrates how it is not possible to provide an effective service without ongoing and organised processing of data throughout the course of business, which could apply *mutatis mutandis* to the activities of an airline.

IATA also advocates that their members nominate a DPO as required by the Regulation in relation to Article 37(1) (b), and contact a specialised lawyer for any specific questions, as associations are not equipped to give detailed legal advice. ERA acknowledges and supports this position.

Scope of regulation

The ERA Industry Affairs Group was fortunate to have ERA member Hill Dickinson present on GDPR at its November 2017 meeting. They highlighted the far-reaching nature of GDPR, as it addresses the following areas:

- consent;
- transparency in data processing;
- online ID and profiling;
- enhanced rights for individuals;
- direct compliance obligations on data processors;
- privacy by design and by default;
- privacy impact assessments (PIAs);
- the role of data protection officers;
- data breaches;
- cyber attacks;
- the impact of a 'one stop shop' – lead authority for regulatory oversight;
- accountability to NDPAs (National Data protection Agencies) and stronger enforcement; and
- expanded territorial scope.

Sharing challenges

ERA continues to monitor for member state readiness (which is difficult to ascertain) and share any difficulties faced by member state airlines with the ERA community. We urge members to share any challenges they may be experiencing.

In addition, ERA will continue to attend seminars and workshops to gather information that will assist members with preparations for the regulation. See <https://www.eraa.org/policy/eu-initiatives/GDPR> on the ERA website for regular updates or get in touch with caroline.osullivan@eraa.org for more information. ■