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Why GDPR will change the landscape

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GDPR comes into effect in May 2018. Already, this regulation is affecting Earthport and many of its counterparties.

There's growing anxiety in some quarters about the upcoming EU General Data Protection Regulation, which will come into effect in May 2018.

This new regulation will present some challenges for most sectors. It will include new obligations on such matters as data subject consent, data anonymisation, breach notification, cross-border data transfers and appointment of data protection officers – in short, it is far reaching.

Basically, companies face more requirements and scrutiny than ever before over how they use and control customer data. And those that breach the rules will incur serious fines, up to 4% of a company's annual revenues or €20 million, whichever is the greater. We've seen before that when the EU wants to demonstrate it has teeth, the penalties can be severe.

It's not just Europe that will be affected. Every company with an operation or a customer base in Europe, in other words every entity that holds or uses European personal data inside and outside Europe, will be impacted by GDPR. One of the cornerstones of the new regulation is the right of consumers to have all traces of their personal data removed from the records of companies with which they do business.

Furthermore, GDPR also requires "data portability", whereby companies must give customers a copy of their personal data to take with them upon request. The enormous responsibilities for sharing and rescinding personal data on a case-by-case basis will have a huge impact on everyone.

Like any other EU entity, Earthport will need to comply with GDPR. However, we should not forget that many of GDPR's main concepts and principles are much the same as those in the current Data Protection Act.

As Earthport complies fully with current data protection law, we believe that most of our approach to data protection compliance will remain valid under GDPR and can be the starting point from which to build on. However, GDPR contains new elements and significant enhancements, so like any other company affected by the regulation, we will have to do some things for the first time. Additionally, GDPR has been written to dovetail with PSD2, so much of the preparatory work that will be needed for GDPR compliance is also mandated by PSD2.

Our business model means that many of our counterparties are either data controllers or data processors of Earthport. Given that GDPR extends to data controllers and processors outside the EU whose processing activities relate to the offering of goods or services to EU data subjects, the general consensus is that many of the entities processing personal data from EU citizens on a large scale will need to appoint a representative in the EU.

Under GDPR, anyone coming into contact with data has similar obligations, including the maintenance of a written record of processing activities carried out on behalf of each controller, the installation of a data protection officer where required and the responsibility to notify the controller when a personal data breach has taken place.

There are other issues to address. For example, some technologies, such as distributed ledger, may have some hurdles to overcome. Under GDPR, a person may request that an EU data processor erase data that the individual no longer wishes to be processed, if there are no legitimate reasons to retain it. Distributed ledger technology platforms would therefore need to be developed to permit the erasure of data, which may be somewhat impracticable.

Of course, for the UK, there are question marks over its forthcoming exit from the European Union. At present, the UK has committed to comply with EU laws and is scheduled to leave the union in March 2019. UK entities will want to maintain access to the EU market in some capacity and will need to comply with GDPR if they wish to keep offering services to EU data subjects.

GDPR may appear to include some fairly onerous obligations and many will take considerable preparation time. That's why it is vital that the implications of this transformative regulation are dealt with sooner rather than later – May 2018 is approaching fast.

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