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DATA PROTECTION & PRIVACY LAWS

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in data protection and privacy laws.





REPUBLIC OF IRELAND

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Nicola Flannery is a director leading out on data privacy and internet regulation. Her industry background is predominantly in tech organisations and she is a subject matter expert in privacy by design across digital products and services. She has extensive experience across end-to-end data protection as well as carrying out DPIAs across the use of new technologies.

She has recently been appointed as an external expert to the Council of Europe Data Protection Unit. Her qualifications include a masters in commercial law and a diploma in technology law. She is a fellow of the IAPP (FIP) and holds a CIPP/E and CIPM.



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Colm McDonnell is a partner in the Deloitte Risk Advisory practice in Ireland and chief operating officer for Risk Advisory in NSE. He has over 28 years of professional services experience with 15 of them as a partner, and in this time he has gained invaluable insight and knowledge across all business sectors. He supports clients in cyber risk, risk management, information and technology risk, regulatory compliance and internal audit through business process and technology specialism.

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Q. Do you believe companies fully understand what true compliance means for data protection in an age of evolving privacy laws?

A. Four years after the EU General Data Protection Regulation (GDPR) came into effect in Ireland, there is a much better understanding of what compliance means, guided by the obligations under the GDPR and guidance from the Irish Data Protection Commission (DPC). However, when we consider ‘true compliance’, based on a model of a truly independent data protection officer (DPO) with a privacy framework that is embedded into all operations, there are certainly gaps in understanding. Quite often, the DPO is also the organisation’s chief risk officer (CRO), chief financial officer (CFO), chief information security officer (CISO), or even chief data officer (CDO), and the balance of interests can be difficult. In other cases, the DPO is expected to be fully accountable and responsible for all privacy compliance with the challenge of embedding it at an operational level without these responsibilities fully understood. There is still a way to go to fully embracing a privacy by design

mentality and rooting it to day-to-day operations which, in turn, demonstrates true compliance.

Q. As companies increase their data processing activities, including handling, storage and transfer, what regulatory, financial and reputational risks do they face in the Republic of Ireland?

A. During and post the coronavirus (COVID-19) pandemic, data processing has become more important than ever, to the extent that it needs to be fluid, uncomplicated and instant, but also compliant, secure and maintain data integrity. Organisations must focus on ensuring that their records of processing activities (RoPAs), data catalogues, data mapping, in fact their entire data universe is fully captured, understood, monitored and access controlled. Non-compliance with the GDPR leaves organisations open to regulatory scrutiny, leading often to a formal inquiry which can result in a large fine of up to €20m or 4 percent of annual global turnover, and reputational impact. The main threats, outside of non-compliance, in the current climate, include

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insider threats, cyber security threats and legal risks.

Q. In your experience, what steps should a company take to prepare for a potential data security breach, such as developing response plans and understanding notification requirements? What penalties might arise for a company that breaches or violates data or privacy laws in the Republic of Ireland?

A. The threat of a potential data security breach should be taken seriously from board level right down to the first line of defence. No organisation, no business unit and no individual is immune in terms of responsibility. Preparation is key and all businesses need to fully understand their ‘data universe’, carry out regular risk assessments internally and on any third parties, and ensure there are risk-appropriate measures in place. They must have a fully operational data breach policy, processes and data breach response plan, as part of a comprehensive data protection framework to complement the information security programme. They must ensure all staff are aware of their responsibilities and regularly trained under

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the policy and processes, and have clarity on steps that need to be taken as soon as a potential breach arises, including reporting mechanisms. They must also ensure that the right response team is stood up.

Q. What insights can we draw from recent cases of note? What impact have these events had on the data protection landscape, including increasing consumer rights?

A. Since 2020, the Irish DPC has issued, or intends to issue, significant sanctions or corrective measures across 15 organisations. The organisations in question span across financial services, telecoms, technology giants, public sector and consumer industries. Over half of these cases were a result of insufficient technical and organisational measures to ensure information security, as well as breaches in compliance with data subject rights, adequate transparency, and lack of a legal basis for data processing. In its 2021 Annual Report, the DPC focused on five regulatory goals under its newly published five-year Regulatory Strategy. These include the need to regulate consistently and effectively, safeguard individuals

and promote data protection awareness, prioritise the protection of children and other vulnerable groups, bring clarity to stakeholders and support organisations, as well as drive compliance.

Q. Would you say there is a strong culture of data protection developing in the Republic of Ireland? Are companies proactively implementing appropriate controls and risk management processes?

A. Ireland is host to many large-scale Europe, the Middle East and Africa (EMEA) headquarters, and there are no organisations across any industry that do not have data protection at some level on their agenda. However, there is a long way to go before we can say that there is a ‘strong culture’ developing. Data protection tends to be tacked on after the fact. It is often seen as the last box to tick, a reaction to an incident, or the DPO’s problem. The moment organisations consider data protection as a brand enhancer and a trust builder is when we will see the culture changing. There is a need to move away from the view that if there is a policy written somewhere on paper, then data protection is sorted.

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Q. As the scale of regulatory scrutiny increases in other areas – including internet regulation and the use of new technologies such as artificial intelligence, blockchain, chatbots, robotic process automation and application programming interface – what impact do these regulations have on data protection compliance?

A. Global connectivity, online communication and commercial interaction have grown exponentially, to the extent that we are now seeing a new wave of global regulation focusing on the internet and a whole host of new technologies. In Ireland, the government has launched a new national digital strategy ‘Harnessing Digital – The Digital Ireland Framework’, which is focused on building upon the Irish economic ecosystem and Ireland’s success as the European headquarters for many high-tech multinationals. The ambition of this framework is to put Ireland at the forefront as a digital leader and to enhance inclusiveness, security and safety. There is a particular emphasis on cyber security, and we are already seeing an emerging regulatory framework with the

introduction of the new Online Safety and Media Regulation Bill. Ireland has also seen the rise of internationally recognised FinTech start-ups, and this surge does not seem to be abating.

Q. In the era of big data and digitalisation, with an increased focus on data management, what are the implications for data protection compliance and the overall strategic aims of organisations, including operational aspects such as sustainability?

A. Data protection and sustainability do not immediately strike a chord as impacting on one another, but the foundations of data protection are built on good data management and data management is key to prioritising sustainability within operations. Data retention requirements under the GDPR have been the most difficult to implement and comply with and, arguably, are often the main source of non-compliance across every sector. Understanding your data universe in totality, right down to metadata, unstructured data, and the sealed-up boxes of paper in the basement or sitting with a third party storage

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provider is a massive undertaking for any organisation. Identifying the full data catalogue and putting the right data management framework in place, including all elements of data retention requirements, and moving forward with that framework while securely ring-fencing legacy data with a prioritised plan to remediate seems to be a sensible risk-based approach. We are also aware of statistics such as the fact that 13 percent of the world's electricity supply will be consumed by physical data centres by 2030. Managing this data links directly to data protection obligations around only collecting personal data that is necessary and only retaining the data as required by law before securely deleting. Organisations thinking about their sustainability strategies should be considering it in the context of their data management practices. □

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