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# Perceptions of controllers on EU data protection reform: A Finnish perspective

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## ABSTRACT

### Keywords:

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Personal data  
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Data protection regulations are undergoing a global reform. The European Commission proposed a reform of the EU data protection framework in 2012. One major driver for the reform has been the research on the consumer perceptions indicating that the consumers are worried about their personal privacy. However, there has been practically no research on perceptions of companies (the controllers of the personal data) and on the data protection reform. This research analyses the awareness and the willingness to act towards compliance regarding the proposed General Data Protection Regulation (GDPR) in Finland in 2013. The GDPR will replace the Finnish Personal Data Act and therefore plays a central role in the Finnish privacy regulation. This research found that the general level of awareness was low: only 43% of the controllers were aware of the forthcoming reform. The willingness to act or to take steps towards the compliance was even lower: 31% of controllers said that they are planning to act towards compliance during this year. These results indicate that the companies are quite unfamiliar with the reform that correlates with other relevant studies in Europe. Personal data are said to be the oil of the digital economy, the hottest commodity of the market today. There are companies that understand this, but the majority seems to ignore this at least what comes to their awareness regarding the reform, even the reform captures many of the best practices regarding processing of personal data.

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## 1. Introduction

Europe has a comprehensive data protection regulation that has served well since it was defined in 1995. During the past years, the emergence of social media, cloud computing, big data and smart phones have added pressure to update this regulation. Processing of digital data is growing all the time and 50-fold growth is expected for the digital universe from

2010 to 2020.<sup>1</sup> Digital data help data controllers to create better products and services, but all this development may not be done at the expense of the consumer privacy. A number of success stories show that digital data can be utilized in a way that both, the consumers and the controllers, benefit from the processing of this data. Some say that the data is the oil of the digital economy, the hottest commodity on the market today.

It has been widely recognized that the current data protection regulation is out of date.<sup>2</sup> To protect the consumer privacy

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<sup>1</sup> IDC IView, The Digital Universe in 2020, December 2012 <http://www.emc.com/collateral/analyst-reports/idc-the-digital-universe-in-2020.pdf>.

<sup>2</sup> C. Kuner, The European Commission's Proposed Data Protection Regulation, Bloomberg BNA Privacy & Security Law Report, Feb 2012 <http://www.wsgr.com/eudataregulation/pdf/kuner-020612.pdf>.

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in the changing digital economy, the European Commission has made a proposal about the data protection reform, General Data Protection Regulation (GDPR), in 2012. The reform was welcome, since a number of studies<sup>3,4</sup> show that consumers are worried about their personal privacy. There has been a significant research on consumer attitudes on privacy in the internet, and these studies have been used as an input material for the reform. However, data controllers, or companies processing the personal data are the ones that need to implement legal requirements. Eurobarometer surveys, especially Data Controllers' Perceptions<sup>5</sup> used to measure controllers' awareness for data protection issues. But these surveys have not been conducted since 2008, which were several years before the introductions of the first GDPR proposal. Currently, very little research is available on the perceptions of companies towards the reform: only UK's Information Commissioner's Office (ICO) has conducted a research<sup>6</sup> with a focus on the costs, challenges and required support regarding the GDPR in 2013. In practice, there is limited information available on the perceptions of data controllers, indicating that there is a gap in the existing research.

Controllers are the controllers of personal data and will carry the burden of the implementation of the regulation. It is important to understand the perceptions of controllers in planning any activities regarding awareness building or creating supporting material for implementing the regulation. This research aims to discover the perceptions of controllers on the data protection reform in Finland. The research measures the awareness of the data protection reform and the readiness of regulatory compliance amongst controllers in Finland. All of the controllers within the research were known to have significant databases of personal data.

## 2. Privacy regulation in Finland

If and when implemented, the data protection reform will change the existing national privacy regulation, the Personal Data Act,<sup>7</sup> in Finland. The Personal Data Act came into force in 1999 and accommodates the EU Data Protection Directive. In addition to the Personal Data Act, there are few other regulations contributing to the privacy protection. They are:

<sup>3</sup> Opera Software, Whoâ€™s watching you?, 2011 <http://business.opera.com/press/releases/general/whoa-s-watching-you>.

<sup>4</sup> European Commission, Special Eurobarometer 359: Attitudes on Data Protection and Electronic Identity in the European Union, June 2011 [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_359\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_359_en.pdf).

<sup>5</sup> European Commission, Eurobarometer, Data Protection in the European Union, Data Controllers' Perceptions, Analytical Report, 2008 [http://ec.europa.eu/public\\_opinion/flash/fl\\_226\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_226_en.pdf).

<sup>6</sup> London Economics, Implications of the European Commission's proposal for a general data protection regulation for business, 2013 [http://www.ico.org.uk/news/latest\\_news/2013/~media/documents/library/Data\\_Protection/Research\\_and\\_reports/implications-european-commissions-proposal-general-data-protection-regulation-for-business.ashx](http://www.ico.org.uk/news/latest_news/2013/~media/documents/library/Data_Protection/Research_and_reports/implications-european-commissions-proposal-general-data-protection-regulation-for-business.ashx).

<sup>7</sup> Personal Data Act 1999 (Finland) <http://www.finlex.fi/en/laki/kaannokset/1999/en19990523.pdf>.

- Act on the Protection of Privacy in Electronic Communications
- Act on the Protection of Privacy in Working Life

There are also other special regulations that contribute to the processing of personal data, such as the Act on the Openness of Governmental Activities. In general, as with the rest of the EU countries, the privacy regulation in Finland is comprehensive.

The enforcement of the privacy regulation has been getting stricter in Finland during the recent years. Especially after the European Court of Human Rights (ECHR) found that a Finnish hospital had inadequate safeguards for the right to respect for private life,<sup>8</sup> the number of judgments<sup>9,10</sup> in the health care has increased.

## 3. Implications of data protection reform

The main implication of the data protection reform is that the Personal Data Act in Finland will be replaced with the GDPR, bringing new requirements for companies. The GDPR inherits the requirements in EU Data Protection Directive, meaning that many of the existing data protection requirements will remain. In addition to these, there will be a set of new requirements meaning that the existing privacy regulation framework in Finland is complemented with new requirements. Some examples of new requirements introduced by the GDPR are discussed below:

- Accountability: the responsibility to demonstrate the compliance of data processing operations will move to the controller. The compliance can be demonstrated in many different ways and some examples to measure the compliance are data processing documentation and evidence of the implementation of appropriate technical and organizational security mechanisms.
- Data protection by design and by default: controllers will be required to integrate privacy into the development processes (privacy-by-design) and provide services with privacy-friendly default settings (privacy-by-default).
- Data protection officer (DPO): the controller and the processor shall need to designate a data protection officer. The DPO will have quite a few requirements and tasks to carry out, such as the monitoring of performance of data protection impact assessments.
- Right to be forgotten: consumers shall have the right to request erasure of their data. This means that the data should be removed without delay, unless there are restrictions for doing so (like regulatory retention period).
- Data breach notification: in the case of a personal data breach, controller is obligated to notify the supervisory authority within 24 hours since they have become aware of

<sup>8</sup> I v Finland ECHR 20511/03 (17 July 2008) <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-87510>.

<sup>9</sup> Myllylä-urkinnasta kahdelle poliisille vapauttava – kahdelle sakot <http://www.hs.fi/kotimaa/a1373334743933>.

<sup>10</sup> Tietojen urkinta maksoi hoitajalle lähes 40 000 euroa [http://m.iltalehti.fi/uutiset/2013070517232572\\_uu.shtml](http://m.iltalehti.fi/uutiset/2013070517232572_uu.shtml).

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