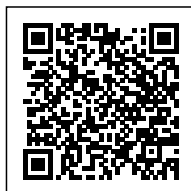


AVOIDING THE WAVE OF DATA PROTECTION FINES

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In April 2008, a new regulation developing Organic Law 15/1999 that implemented the EU's Data Protection Directive, came into force, updating Spain's own existing data protection regulation (LOPD), and bringing stringent new rules affecting the way that businesses manage their data, says Marta Plana at Osborne Clarke in Barcelona, increasingly regarded as the technology capital of Spain.

✘ The new Regulations were intended to bring domestic coherence to the EU Directive and greater precision to the existing data protection rules. The result however, is that

Spain now has more comprehensive legislation and one of the most restrictive on data protection within Europe.'

Under the new rules, data processing encompasses among other things the collection, recording, storage, adaptation, modification and blocking and cancellation of personal data. Regulatory oversight and enforcement of the regime is handled by the Spanish Data Protection Authority (Agencia Española de Protección de Datos – AEPD).

La transposición de la directiva europea sobre protección de datos, actualizando la legislación que existía en España sobre este tema, ha traído nuevas normas, más estrictas, que afectan a la manera que tienen las empresas de controlar sus datos, opina Marta Plana, de Osborne Clarke en Barcelona. El resultado es que quizá España tiene ahora la regulación más completa y restrictiva sobre protección de datos que existe en Europa.

An administrative controller is obliged to communicate to the AEPD the creation of any personal data files – held in computer or paper format – including the controller's own details, the database location and content, its purpose, the potential for transfer to third parties and a description of the security level applicable to the file, explains Plana.

'An important change is that personal data held on business contacts – for example, contact persons at clients or suppliers – are excluded from the remit of the LOPD so long as only basic contact details are maintained. But the AEPD, as an independent and self-financing body, is though increasingly sensitive to data protection infringements.'

In 2007, the Spanish Data Protection Agency resolved 399 sanction procedures, a 32.5% increase on the previous year, with the aggregate volume of the fines imposed €19.6m. 'Businesses need to know that AEPD inspections are now common and it may obtain any information it requires to perform its tasks,' she says.

Non-compliance, she warns, can bring fines ranging between €600-€800,000 calculated according to the volume and severity of infringement.

'Companies need to understand and inform their employees about the risks that could be incurred by simply sending emails or storing information. It is vital for organizations to take data protection seriously – and for people to know how their information is being processed.'