

## COUNTRY UPDATE-Spain: GDPR

Mar 09 2018 [TRRI commissioning team](#)



The [General Data Protection Regulation](#) (GDPR) comes into force across the European Union on May 25, 2018. Many of its provisions contain "opening clauses" enabling member states to introduce national laws that take GDPR requirements further.



This article provides an oversight of the relevant law in Spain by [Sergio Miralles](#) and [Sergio de Juan-Creix](#) of [Intangibles Legal S.L.P.](#)

### GDPR basics

This section briefly outlines some core GDPR provisions.

**Application:** The GDPR applies to EU-based controllers and processors of personal data. It also applies to non-EU bodies where they process an EU resident's personal data in relation to offering them goods or services or the behaviour of individuals within the EU is being monitored.

**General Principles:** Set in Article [5.1](#). Personal data must be processed "lawfully, fairly and in a transparent manner". Among additional requirements, processing must be limited to a specified, explicit and legitimate purpose, the data must be accurate and processed in a manner that ensures it appropriate security.

**Article [5.2](#):** The person controlling the data is responsible for, and must demonstrate compliance with the [5.1](#) requirements.

**Legal Bases:** Article [6](#). There are six legal bases for data processing. These include compliance with a legal obligation, legitimate interest and, subject to conditions in article [7](#), consent of the subject.

**Rights of data subjects:** Articles [12-23](#). These include right to be informed, to object, of data access, rectification, portability and erasure.

**Data Protection Officer (DPO):** Article [37](#). Where a data controller or processor's core activities require 'regular and systematic monitoring of data subjects on a large scale' they must appoint a DPO.

**Impact Assessments:** Article [35](#). Before a data controller conducts processing that presents a high risk to people's rights and freedoms, in particularly using new technologies, it must carry out a data protection impact assessment (a DPIA).

1. What pre-GDPR national data protection or processing legislation did Spain have and how did it compare to the basic Data Protection Directive 95/46/EC requirements?

The current main Spanish data protection regulations are (i) 1999 [DP Act](#) (Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal) and (ii) [Royal Decree no. 1720/2007](#) (Real Decreto 1720/2007, de 21 de diciembre, por el que se aprueba el Reglamento de desarrollo de la Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal).

These regulations transposed Data Protection Directive 95/46/EC. We point out that Spanish regulations set out several requirements not included in Directive 95/46/EC. For instance, the obligation to notify personal data files to the Spanish DP Agency ([Agencia Española de Protección de Datos](#)), specific provisions setting forth requirements for controller-to-controller assignments of data and the obligation to implement certain security measures to the processing performed either by a data controller or a data processor.

2. What will happen to existing national data law when the GDPR comes into force?

In principle, any provision of the current Spanish data protection regulations which is contrary to the GDPR shall not be longer applicable after the full application of GDPR on May 25, 2018. For instance, the above mentioned personal data files notification shall not be longer applicable after May 25, 2018 (see question 1).

Additionally, note that the upcoming Spanish DP Act (the Draft DP Act), which will replace the existing 1999 DP Act (please see question 4 below), sets out that breaches committed and proceedings initiated before the entry into force of the Draft DP Act shall be subject to the previous 1999 DP Act, except if the Draft DP Act contains provisions more advantageous for the interested party than the previous 1999 DP Act.

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3. Which regulator will supervise the GDPR and have there been any indications of how it will approach oversight and enforcement?

The Spanish DP Agency ([Agencia Española de Protección de Datos](#)) will continue being the regulator supervising the data protection regulations (i.e., including the GDPR) in Spain. The Spanish DP Agency has published several guidelines on GDPR compliance (e.g., data controllers guidelines, impact assessment guidelines, etc.). We point out that the Spanish DP Agency has made available a tool, named Facilita RGPD, to help SME (PYME) companies to comply with the GDPR.

4. Any new national legislation that extends GDPR requirements been introduced or planned?

Yes, there is an upcoming [Draft DP Act](#) that will replace existing 1999 DP Act.

In June 2017, the Spanish Government published the Draft DP Act. The term granted to stakeholders to provide comments closed on July 19, 2017. On November 24, 2017, the Council of Ministers approved the Draft DP Act and passed it to the Parliament for its deliberation and approval during 2018. The aim is that the Draft DP Act will enter into force simultaneously with the full application of the GDPR (May 25, 2018). However, it seems difficult that this term will be met due to the current work load of the Spanish Parliament.

5. Any other legal considerations around data processing that financial services firms should be aware of?

It may be of financial services firms' interest to know that the Draft DP Act further regulates the regime vis-à-vis solvency information systems or "credit blacklists". The Draft DP Act sets out that, under certain circumstances, a data processing in the framework of a "credit blacklist" may rely on legitimate interest grounds.

Additionally, regarding the appointment of a data protection officer, it may also be of financial services firms' interest to know that the Draft DP Act sets out additional cases when the appointment of a data protection officer will be mandatory beyond what is required under the GDPR. Besides, note that in June 2017 the AEPD issued a [Certification Scheme of Data Protection Officers](#).

Finally, regarding data retention, note that the 1999 DP Act currently in force sets forth the obligation for data controllers and processors to keep personal data blocked even after its cancellation or suppression to attend potential contractual or statutory liabilities related to the processing. The data will remain blocked and only available to the Spanish Courts and tribunals, the Office of the Public Prosecutor (Ministerio Fiscal) and competent public authorities, such as the Spanish DP Agency. In no case, such blocked data may be used for other purposes than to attend such potential future liabilities. Furthermore, suitable security measures to protect the limited use and access of such blocked data shall be implemented.

However, the Draft DP Act only sets forth the aforementioned obligation vis-à-vis controllers. Notwithstanding this, we consider that such obligation could also be applicable to processors since accounting, labor or other regulations may require that they keep such data (blocked) to attend potential contractual or statutory liabilities related to their past processing.

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