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"NAIL" COMPLIANCE BASICS TO AVOID LARGE GDPR FINES, LAWYER SAYS

TOM WEBB | 2 JULY 2018

A leading data protection lawyer has predicted that technology will be a key target for GDPR enforcers, and cautioned companies to have written plans and impact assessments ready to help avoid the prospect of large penalties. *Tom Webb in Cambridge*

Hogan Lovells London partner Eduardo Ustaran predicted on 2 July that Europe's data protection enforcers will probably pursue "something to do with technology" as a key priority, noting that several of them have previously indicated this. He spoke at Privacy Laws & Business's annual conference in St John's College, Cambridge.

Ustaran advised that companies attempt to comply with the law and "nail the basics" of compliance – though noted that knowing how to comply can be unclear: "Who knows how to comply with the law? We're going to be deciding what the scope of legitimate interests is for the next 20 years."

Referring to "basic issues" that data controllers need to think about, he noted that the GDPR has a tool to help such thinking: data protection impact assessments. "It's precisely aimed at making you think about those basic issues. So you are much more likely to get it right if you do at least data protection impact assessment – I would say do a lot more."

He advised against companies being "arrogant" or "defensive" in their interactions with enforcers: "What do you think a regulator is going to do?"

Speaking from the audience, Linklaters counsel Peter Church asked whether there was any evidence that enforcers – especially smaller ones across Europe – have actually set out to build their enforcement capacity.

Ustaran said larger fines are unlikely to come from such smaller agencies – partly as they need to be "brave" to impose large penalties, as they will be more likely to attract appeals.

He noted that breaches in such cases would also need to be clear-cut, so that if appeals do take place, data protection authorities have strong arguments in court.

The conference continues until 4 July.