South Africa adopts comprehensive privacy law

The law is heavily influenced by the EU draft DP Regulation and European DP tradition. Pamela Stein reports.

After eight years of deliberations and numerous reviews, South Africa’s first comprehensive data protection law, the Protection of Personal Information Bill (POPI), was finally approved by Parliament in August 2013 and gazetted and signed into law on 28 November. The date of commencement has yet to be declared by President, Jacob Zuma. Once POPI is in force, organisations will have a transitional period of one year to ensure compliance with POPI before its provisions take effect.

Scope of POPI
POPI applies to every person ("person" includes natural and legal persons), known as the “responsible party”, who processes the personal information of another, known as the "data subject" where the responsible party is domiciled in South Africa. If the responsible party is not domiciled in South Africa, but makes use of automated or non-automated means for the processing of personal information in South Africa, then compliance with POPI is required.

POPI applies to all processing of information in the private and public sector, with limited exclusions including processing:
1 In the course of household or personal activity;

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EU asks for US Safe Harbor changes by summer 2014

The EU Commission has recently issued a Communication on the US Safe Harbor and made 13 recommendations on how it should be improved (p.6). It has also stated that it will not negotiate data protection issues within the EU-US trade agreement. In light of these developments, it would seem likely that the Safe Harbor agreement will be updated rather than revoked.

The EU Council of Ministers discussed the draft EU DP Regulation on 5-6 December only to realise that the concept of one-stop-shop may pose a legal problem (p.29). The Council will also need to address the timetable which, in particular, the UK and Germany wish to delay. While the UK hopes to see a relatively flexible, lower level of protection, Germany wishes to ensure that its current standard, partly offering more protection than the EU DP Directive, will remain in place.

It seems that not much progress has been made since the European Parliament approved its compromise text in October. “If there’s not the necessary political will, the whole Regulation is at risk,” Jan Philipp Albrecht, European Parliament rapporteur, said in a phone interview on 3 December to Bloomberg News.

Both the European Data Protection Supervisor, Peter Hustinx, and the EU Art. 29 Data Protection Working Party have expressed concern about the timings and the need to press on. At the beginning of 2014, the EU presidency will pass from Lithuania to Greece. The Greek Presidency has already indicated it will make data protection one of its main priorities (p.31).

In Malaysia, the law has finally entered into force (p.11). South Africa has adopted a law but has not yet announced the enforcement date (p.1). Other important topics include the relevance for business of the OECD revised privacy guidelines (p.15) and France’s decision on notification to the CNIL as a crucial factor in the legality of databases (p.5).

Laura Linkomies, Editor
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