

Privacy insights

To many companies, the real risk of data protection is the damage a breach could do to their reputation and to the trust customers and employees have in them.

THE GOVERNMENT RECENTLY issued a booklet, *Data protection and privacy* concerning the collection of personal data. This is part of an awareness strategy including conferences, information sessions, and publications to educate people on an area of the law that is often not well known but increasingly affects many if not all of us. As companies become more informed they also have to take their own responsibility to comply. Katia Scheidecker, of NobleſtScheidecker, Avocats à la Cour, speaks about some basic laws that individuals and companies should start being more aware of. "We have to teach awareness. This is why the commission is issuing booklets. Nothing will happen if people are not concerned about their rights."

"One of the problems from the outset is that people think they will not be able to comply with all the rules," Katia explains. There are basic things that companies should do, such as respecting the rights of data subjects and sending their notifications to the commission. It's not just a question of knowing the laws but also putting them into practice and she acknowledges it takes time for companies to become fully compliant.

The best way to comply with Luxembourg regulations when you transfer data to a country outside the E.U. that has not an equivalent level of protection is to put a specific

privacy contractual framework into place whatever size the company is. This framework should guarantee the level of protection. The person who receives the data is thus obliged by the contract that is in place, as well as the rules of the country where he lives. Such transfer must be notified to the Commission. Although the process seems complex, "Companies still want to outsource their IT to places like India because of the cost saving. So they must consider whether it's worth it to pay the price of the contractual agreement and compliance process that must be put into place."

There are different issues depending on the size of a company. "In a small company it isn't such a big problem to become compliant but with a large company you really have to have a department approach." Workshops are an effective way to start the compliance process and make employees in one area of a company aware of the importance of the data flows. "What data do they have? How do they process it? Where does it come from?" A strategy has to be put into place to bring the company up to a level of legal compliance.

Corporate responsibility is becoming more of a factor in the way a company needs to protect data. To avoid any misuse of the collected data, and the risk of stealing data, the company must inform and describe to the commission all

the security measures listed by the law that have been undertaken in this respect. Some provisions state that companies must put some measures into place so that employees only have access to the data needed for their jobs and provide for technical security so that data cannot be transferred that doesn't need to be transferred.

People must also be aware that when a web site collecting data transfers it to a third party the person whose data it is must be informed. When asked whether it isn't quite easy for someone to just set up a web site and accidentally break the law without knowing it by not complying, Katia agrees, "That's the case most of the time as Luxembourg law may often apply even if the website is not set up in Luxembourg. The laws are very constraining and the awareness of data transfer rules is often not sufficient." In Luxembourg, professionals in the financial sector may think that, because they are complying with the strict bank secrecy rules, they don't have to focus on data protection. But there are other obligations than pure confidentiality that companies might overlook or find difficult to apply simultaneously. Referring to the new government publication, Katia says, "Everything described in the brochure is not specific to the banking sector, and this has to be complied with as well." ■ Mary Carey

Photo: David Lambert/IFP



Katia Scheidecker: "Following years of non enforcement, Luxembourg has now implemented a strict privacy framework. That's why people are just becoming aware of the rules and obligations that follow."