

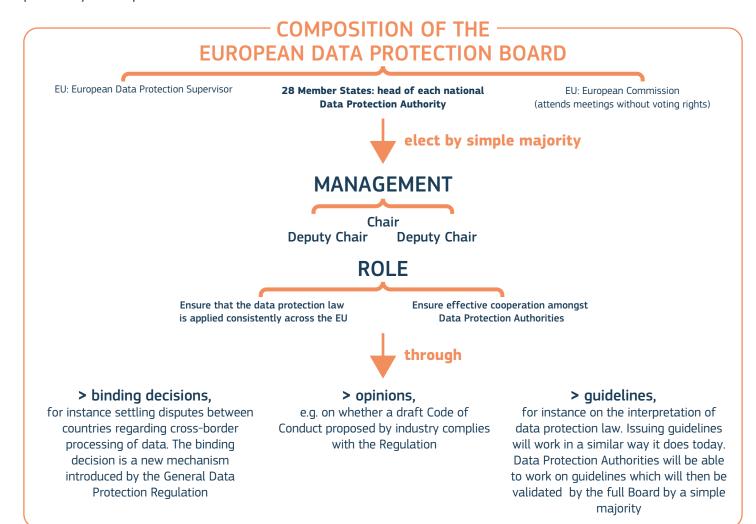
## **EU Data Protection Reform:**

### ensuring its enforcement

Fact sheet | January 2018

The General Data Protection Regulation provides for a single set of rules directly applicable in all Member States as of 25 May 2018. This means that it can be directly relied on by citizens, businesses, public administrations and other organisations processing personal data. As enforcers of the Regulation and direct contacts for stakeholders, data protection authorities — particularly the new European Data Protection Board — will play a crucial role to ensure a uniform application of the new rules across the EU.

Enforcement of the General Data Protection Regulation will be facilitated by a new body — the European Data Protection Board — as well as the new binding decision-making by the Data Protection Authorities, including a possibility to adopt decisions with fines.



# BINDING DECISION MAKING BY THE BOARD (Art. 65) — IN PRACTICE -For example, 4 Data Protection Authorities have noticed a similar data protection issue (e.g. data breach) in their countries The leading authority is designated on the basis of the criteria (for more information on them see Art. 56 (1) provided in the General Data Protection Regulation) Lead authority drafts decision Consensus between the 4 authorities No consensus between the 4 authorities 4 authorities adopt national decisions Decision is taken by the Board on the basis of the draft prepared by by 2/3 majority the lead authority 4 authorities adopt national decisions on the basis of the Board's decision — this decision is binding for the 4 authorities concerned One example of a case that could have been treated through this new binding decision making (if the new

One example of a case that could have been treated through this new binding decision making (if the new Regulation was in place) is the Google Street View case - on which national authorities received complaints from citizens and on which the authorities worked separately adopting different decisions and approaches. This led to legal uncertainty for the company operating in different Member States.

#### HOW WILL THE SANCTIONS MECHANISM WORK IN PRACTICE? Suspicion that a company in an EU country does not respect new data protection rules Data Protection Authority (DPA) in that country analyses the case The Data Protection Authority The Data Protection Authority concludes that the company concludes that the company **RESPECTS the rules BREACHES the rules** The Data Protection Authority The Data Protection Authority No action adopts a decision but adopts a decision does not impose a fine and imposes a fine e.g. suspension of data flows to a recipient in third country Depending on infringement (\*): fine up to 4 % of company's worldwide annual turnover, e.g. reprimand to company or up to 20 million EUR, e.g. ban on processing of data (temporary or definitive) whichever is higher

In some cases, Data Protection Authority can combine a fine with e.g. a ban or a reprimand

- (\*) Data Protection Authorities take into account the following elements to determine the fine:
  - nature of the infringement done by company (see articles 5, 6, 8, 9 of the GDPR)
  - actions taken by company to mitigate the damage suffered
  - · relevant previous infringement done by the same company

#### - COMPLAINT MECHANISM FOR CITIZENS -

Citizen identifies that his/her data protection right is not respected



Citizen contacts the national
Data Protection Authority
(according to Art. 77
of the Regulation)

This authority will guide him/her on how to take the case forward based on the specific national procedure in place (\*)

Citizen goes to the court (according to Art. 79 of the Regulation)

(\*) Full list of national Data Protection Authorities: http://ec.europa.eu/justice/data-protection/bodies/authorities/index\_en.htm