

Summary and conclusions

Introduction

In 2012 the European Commission unveiled a draft European General Data Protection Regulation that will supersede the Data Protection Directive (Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data)¹. The Data Protection Directive was transposed in the Dutch Law on the Protection of Personal Data. The aim of the draft Regulation is to adapt the current Data Protection Directive to new technological developments. This report provides an insight into the effects of the new Data Protection Regulation on Dutch businesses. The report focuses in particular on the Regulatory Burden².

Findings

Table 1 shows the total Regulatory Burden (Administrative Burdens and Compliance Costs) of the proposed Data Protection Regulation for Dutch businesses. Table 2 shows the total Regulatory Burden of the current Dutch Law on the Protection of Personal Data. The Regulatory Burden of some of the legal obligations, however, could not be quantified. Therefore it is possible that the actual Regulatory Burden may be higher.

Table 1. Total Regulatory Burden of the European General Data Protection Regulation.

Type of burden	Low Estimate		High Estimate	
Administrative Burdens (AB)	€	1,490,532	€	1,490,532
Compliance Costs (CC)	€	1,123,998,948	€	1,467,573,948
Total	€	1,125,489,480	€	1,469,064,480

The tables use a bandwidth (i.e. a low estimate and a high estimate) due to the inherent uncertainty surrounding the documentation obligation in Article 28 of the proposed General Data Protection Regulation. At this point in time there are many questions about the practical implementation of Article 28 which introduces the obligation for controllers and processors to maintain documentation of the processing operations under their responsibility, instead of a general notification to the supervisory authority required by Articles 18 and 19 of Directive 95/46/EC.

Table 2. Total Regulatory Burden of the Dutch Law on the Protection of Personal Data.

Type of burden	Costs	
Administrative Burdens (AB)	€	1,726,363
Compliance Costs (CC)	€	70,804,716
Total	€	72,531,079

¹ Regulations are the most direct form of EU legislation and as soon as they are passed, they become immediately enforceable as law in all Member States. Regulations are passed either jointly by the EU Council and European Parliament, or by the Commission alone. Directives require Member States to achieve a certain result without dictating the means of achieving that result. Member States have to transpose Directives into national law. This transposition is typically done by either primary or secondary legislation.

² The Regulatory Burden includes Administrative Burdens (AB) and Compliance Costs (CC). Administrative Burdens are the costs for businesses to comply with Information Obligations resulting from government legislation. Compliance Costs are the costs for businesses to comply with other Legal Obligations.

Conclusions

- The Administrative Burdens caused by the proposed General Data Protection Regulation as well as the current Dutch Law on the Protection of Personal Data constitute only a small part of the total Regulatory Burden. The Compliance Costs are in both instances significantly higher.
- When the proposed General Data Protection Regulation comes into force, the Administrative Burdens will decrease slightly, but the Compliance Costs will increase significantly.
- The total quantifiable effect of the proposed General Data Protection Regulation on Dutch businesses will be an increase of the Regulatory Burden with either € 1,052,958,401 (low estimate) or € 1,396,533,401 (high estimate).

Evaluation

This study is solely focused on the quantification of the effects of the proposed Data Protection Regulation on the Administrative Burdens and Compliance Costs of Dutch businesses. Other financial effects have been excluded.

As we have seen in relation to Article 28, the proposed General Data Protection Regulation leaves some leeway with regard to the interpretation of certain legal obligations. Because of this, it is difficult to estimate beforehand how and which businesses will have to comply with said obligations. Consequently the Regulatory Burden for businesses cannot be measured exactly but has to be estimated. All assumptions and suppositions used in this report to estimate the Regulatory Burden are clearly indicated and accounted for in the attached Standard Cost Model (SCM)³.

³ The SCM is a tool that has been developed to calculate Administrative Burdens.