

# Data protection and privacy

2023



# Why data protection has become a crucial and complex topic for companies

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## The data dilemma

No one doubts the value of data. In a world in which data driven insights are keenly sought and where broad and robust data sets power AI, one hypothesis is that the more data a company collects, the more valuable that data may become (if the data holder is able to interrogate or monetise this valuable resource to full effect).

However, gathering, holding and using data comes with real risks that multiply as the volume of data being collected grows – not least the risk of illegal access and processing. These are risks which if realised may seriously damage

a company's reputation, create regulatory and commercial liability and expose a company's underlying values and principles, including the way it behaves towards its customers and employees.

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## A compliance issue

In the digital age, companies feel compelled to keep pace with an explosion of new systems and technologies that are changing the way they do business. This creates growing complexity at a time of strict data protection laws and punitive sanctions. The rate at which new data protection laws are being enacted across the world further complicates the picture. With the potential for significant penalties in many jurisdictions, companies have no choice but to tackle this legal uncertainty head on.

Given that the vast majority of data processing has an international dimension, it is particularly important that companies understand the restrictions they face on transferring data across borders and formulate an approach to compliance that will survive the test of multiple different legal regimes.

“Working with them is delightful. They are highly professional, deliver immaculate client service and have a deep knowledge of data protection technicalities.”

Chambers Global 2019 (Data protection)

“They have fantastic resources and they can turn round anything we ask them.”

Chambers UK 2021 (Data protection)



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### A competitive argument

Companies that demonstrate their ability to provide high levels of data security in a thoughtful manner that is based on applicable legal regimes will be seen by both consumers and businesses as being more trustworthy. Indeed, evidence shows that when a company fails to process data in a compliant and secure way, that data loses its value – a high price to pay at a time when data has become a key economic and commercial resource.

In a complex and globalised environment, companies therefore face three main challenges:

Achieving a high level of security for the personal data they process

Complying with all applicable laws as they constantly evolve

Harnessing innovation, and not letting compliance procedures hold back development

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### Weekly data and cyber update

We have a weekly client update which tracks GDPR, e-Privacy, cybersecurity and other data privacy developments in and outside the EU. If you would like to receive this weekly update, please email [AODataProtection@allenovery.com](mailto:AODataProtection@allenovery.com) and we will be happy to add any of your team members to the distribution list.

# Why choose Allen & Overy's data protection practice?

Allen & Overy's international network of data protection practitioners provides clients with practical, business-oriented support and legal advice. We recognise that data protection lies at the crossroads where security, IT, innovation and the law meet. We fully understand that data protection is an important operational issue, so we address our clients' concerns in a pragmatic and hands-on way.

Our expertise in this field is wide ranging and we have the industry knowledge to meet the needs of clients working in very different sectors, whether financial services, life sciences, industrial and manufacturing, telecommunications or retail and consumer goods.

We share our knowledge with clients through tailored seminars and bespoke training, and often produce articles and other research for clients and press. We also continue to develop innovative products in service delivery. For example, Rulefinder, a legal analysis database, which assists organisations in complying with privacy laws globally. The service considers key compliance topics (consent, cookies, breach response, employment and marketing scenarios) and presents actionable data points, supported by daily monitoring and alerts.

Thanks to our unrivalled international network of 40+ offices we can also provide real cross-border support to our clients. In addition, our strong connections with the leading data protection authorities mean we can support our clients in all their dealings with local regulators.

## Rulefinder Data Privacy

Analysis of global data privacy obligations in one easy to navigate location

Contact us for a free trial

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Rulefinder Data Privacy is an online subscription service from our affiliate business aosphere LLP. Subscribers to the service have access to practical information on the legal requirements that apply when an organisation handles data about individuals in multiple jurisdictions. It analyses a range of scenarios common to in-house legal and compliance teams, covering topics such as consent, privacy notices, assessments, data transfer rules, requirements for service providers, common employment and direct marketing scenarios, plus breach response. The content is managed by an expert – and dedicated – team of aosphere lawyers who work closely with the A&O international network and other leading local counsel to source market leading expertise. The content for each jurisdiction is harmonised and presented online in a range of formats and levels of detail – from comprehensive legal surveys to colour-coded summaries.

Key features include a "territorial scope view" to make sense of which rulebooks apply to your fact pattern, a horizon scanning tracker document for forthcoming legal developments, examples of recent sanctions, an EU GDPR baseline report prepared by A&O practice group experts, U.S. state as well as federal analysis, and a daily monitoring and email alerts service.

Rulefinder Data Privacy can help your organisation as a cost-efficient alternative to instructing bespoke multi-jurisdictional surveys, as a shared resource for your global teams, and as a horizon scanning monitoring service. For more information and to request a free trial visit [www.aosphere.com/ao/dp](http://www.aosphere.com/ao/dp)







# Representative experience

A global bank on a survey on the legal implications of decrypting employee web traffic across multiple jurisdictions, enabling the Bank to comply with applicable privacy laws and identify the compliance steps necessary. The survey covers a range of purposes for which the Bank may wish to decrypt employee web traffic, including preventing sensitive information leaving the Bank's infrastructure and stopping malware from entering.

A leading car manufacturer on the regulatory and privacy aspects of a global project to develop and commercialise 'connected cars'. We advised on the integration of telematics technology (technology that records a vehicle's trajectory, acceleration, manoeuvres, breaking, etc.) and the use of the data collected from such technologies, for the purposes of artificial intelligence (AI) research & development.

A number of leading UK retail companies on how best to lawfully maximise and share their customer data among various business units or to drive new product offerings. Given the standing of the clients concerned in the public eye and the value of the various opportunities these involve a delicate balancing of the reputational/GDPR risk of taking too liberal a view as against the risk of being overly cautious and falling behind the market. We have been involved in assisting clients considering a range of possible options; appropriate risk mitigations and ultimately determining how best to commercialise data lawfully.

A number of clients on their response to *Schrems II*, including on transfer impact assessments and updates to their data transfer agreements.

A prominent retailer in respect of its use of biometrics in its retail outlets to consider how that technology could be used in compliance with the strict rules on the use of special purpose data.

A number of clients on their responses to DSARs, including in the context of high profile employment disputes and in some cases significant enforcement action where whistleblowers are involved.

A global bank on a range of digital/data initiatives including their use of cookies across Europe and their approach to Adtech. This included carrying out detailed data protection impact assessments across all of the bank's paid media advertising activities, assessing the controllership positions of each relevant entity in the adtech ecosystem, and providing strategic and practical remediation measures.

An international fast food company on the investigations procedures conducted by the French data protection authority (the CNIL), in particular with the management and drafting of responses to the order. We now continue assisting them with day-to-day compliance with the applicable data protection regulation as well as with cyber security issues but also on complex and strategic matters for the group, e.g. cross-border data flows and retargeting.

A number of companies across a range of sectors on reviewing their China data-related policies for compliance with the PRC Cybersecurity Law, PRC Data Security Law and PRC Personal Information Protection Law.

On strategic data protection and data ethics advice in relation to various smart city pilot projects, including the proposed creation of a data marketplace for sharing the intelligence derived from urban big data.

A number of companies in response to ransomware attacks, including considering and dealing with notification obligations across multiple jurisdictions; whether to obtain injunctions in respect of the potential publication of their data; advising on the issues arising in respect of the potential payment of ransoms and the legality of that strategy; and assisting in relation to potential litigation arising from the relevant issue.

A leading technology company on assessing compliance of its vendor selection and management with the requirements under the EU Data Protection Regulation.

Leaseplan on a series of strategic initiatives including the successful carve-out of Carnext.com, the online B2C and B2B used car marketplace from Leaseplan. This involved multiple complex data protections arrangements and analysis to achieve the target operating model.

A global financial institution on coordination of a monitoring survey covering over 30 jurisdictions and preparation of a report on the laws around employee monitoring and other related activities.

A Chinese technology and financial services firm on a number of data protection issues including the implementation of the GDPR, data retention policies and transfer of data to third countries. We advised the client on whether and to what extent its business operations in Europe may be subject to GDPR and how to approach GDPR compliance in the context of a much broader business.

A retailer on a project involving employees and contractors' personal data which requires the retailer to send personal data belonging to its employees from its international sourcing business to the UK. The project involves data collected from the retailer's sourcing hubs situated in various jurisdictions, including Hong Kong, Turkey, Sri Lanka, Cambodia, Bangladesh, and Romania, Vietnam and Pakistan.

A leading pharma business in relation to the international roll-out of a customer portal used by retailer optometrists. We will be advising the clients on the pharma regulatory, data privacy, consumer protection and e-commerce aspects of the new portal.

Transaction Monitoring Netherlands (TMNL) on a major project involving a joint initiative of the five major Dutch banks to counter money laundering and the financing of terrorism, on the IT and (personal) data-sharing aspects of their platform.



# Special focus on...



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## Data Protection Compliance programmes

With regulators placing an increasing importance on accountability, having a robust data protection compliance programme is becoming a priority for many companies. We have the experience to design compliance programmes that meet the varying demands of data protection regimes across multiple jurisdictions.

The number of countries with stand-alone data protection laws continues to grow. For example, the Asia Pacific region has seen rapid development of legislation, with countries such as Malaysia, the Philippines and Singapore adopting umbrella privacy regulations. Our lawyers monitor developments in the law and can help you adopt an approach that is current, compliant and in line with your day-to-day business needs.



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## Binding Corporate Rules (BCRs)

Companies are spending time and resources on preparation of EU model clauses to enable them to transfer data outside of the EU. BCRs may be a more efficient alternative to consider.

Contrary to popular opinion, we have found that approval of BCRs by the EU Data Protection Authorities, when they are well prepared and documented, can be a smooth and trouble-free process.

BCRs provide added value as they give you a comprehensive approach to data protection within your organisation, bringing strong guarantees on the level of personal data protection you provide to customers, employees and also Data Protection Authorities. BCRs are designed to create a real culture of data protection within an organisation. Going further than simple principles, they create procedures to ensure effective implementation.



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## Cybersecurity/Data Breach

Companies identify new security threats every day. At the same time, obligations to notify data breaches continue to grow stronger. Companies need both to better protect their assets and better prepare themselves to handle data breaches and other crisis situations.

Allen & Overy can help you prepare for any potential breaches and we're here to help you put things right if and when a breach occurs.





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### Enforcement

Data Protection Authorities have beefed up control and audit processes. This trend responds to growing demands from stakeholders in recent years. It is now reflected in the EU's General Data Protection Regulation which switches the point of view from theoretical to a more factual approach.

We also handle a broad range of investigations, class actions and group litigation across a wide range of areas and sectors all across the EU as well as globally. This means we are well suited to assist you if a case is initiated.



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### Big data and the Internet of Things

Opportunities for data collection multiply exponentially as more and more objects in our digital world become connected. Companies increasingly analyse these vast data sets to find competitive advantage.

We help clients to plan big data projects to ensure compliant data collection and processing. We also help our clients to navigate the challenges data monetisation projects can present under existing data protection frameworks.



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### Ad tech

In recognition of the growing need for ad-tech support from our clients, we have dedicated experts who foster and share industry knowledge and expertise across our offices and legal disciplines. As many of our clients operate across borders, we support them by being able to combine our talents and resources to provide solutions in almost any country, at any time.

Few firms can deliver the combination of experience and resource that is needed to handle the most important ad tech matters.

Our team benefits from experience acquired not only in private practice but also in-house at leading technology companies and on secondments to corporates and regulatory bodies.

This means we provide relevant industry-focused advice, delivered quickly to ensure that we add value from day one. So, irrespective of the location, the size, or the complexity of the matter, you can be confident that we have the right team in the right place.

# Following industry trends

At Allen & Overy we understand that each sector has its own particular data protection hot spots, while some issues are of common interest to all stakeholders. For example:

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## Telecoms media and technology

- Managing data breaches  
(focus on notification of data breaches)
- Retention of communications data
- Interception of communications
- Data requests from regulators/law enforcement
- Special purpose exemptions
- User generated content
- Impact of the Google “Right to be forgotten” case

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## Infrastructure and transport

- Connected cars
- Cyber security
- Big data

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## Hotels and leisure

- Loyalty schemes
- Data transfers
- Roles and responsibilities

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## Financial institutions

- Data security
- Big data for risk management
- Credit incidents
- Data retention
- Mobile payments
- Online banking
- Mobile apps
- Regulator requests

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## Retail and consumer

- Location-based marketing
- Facial recognition technologies
- Behavioural advertising and social media

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## Life sciences

- E-Health
- Anonymisation
- Cybersecurity rules for medical devices
- Transparency
- Clinical trials
- Health data hosting

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## Industrials and manufacturing

- Internet of Things
- Big data

“Allen & Overy is well resourced,  
and it has a significant depth of  
knowledge across its entire team.”

Chambers Global 2020



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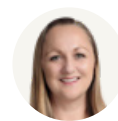
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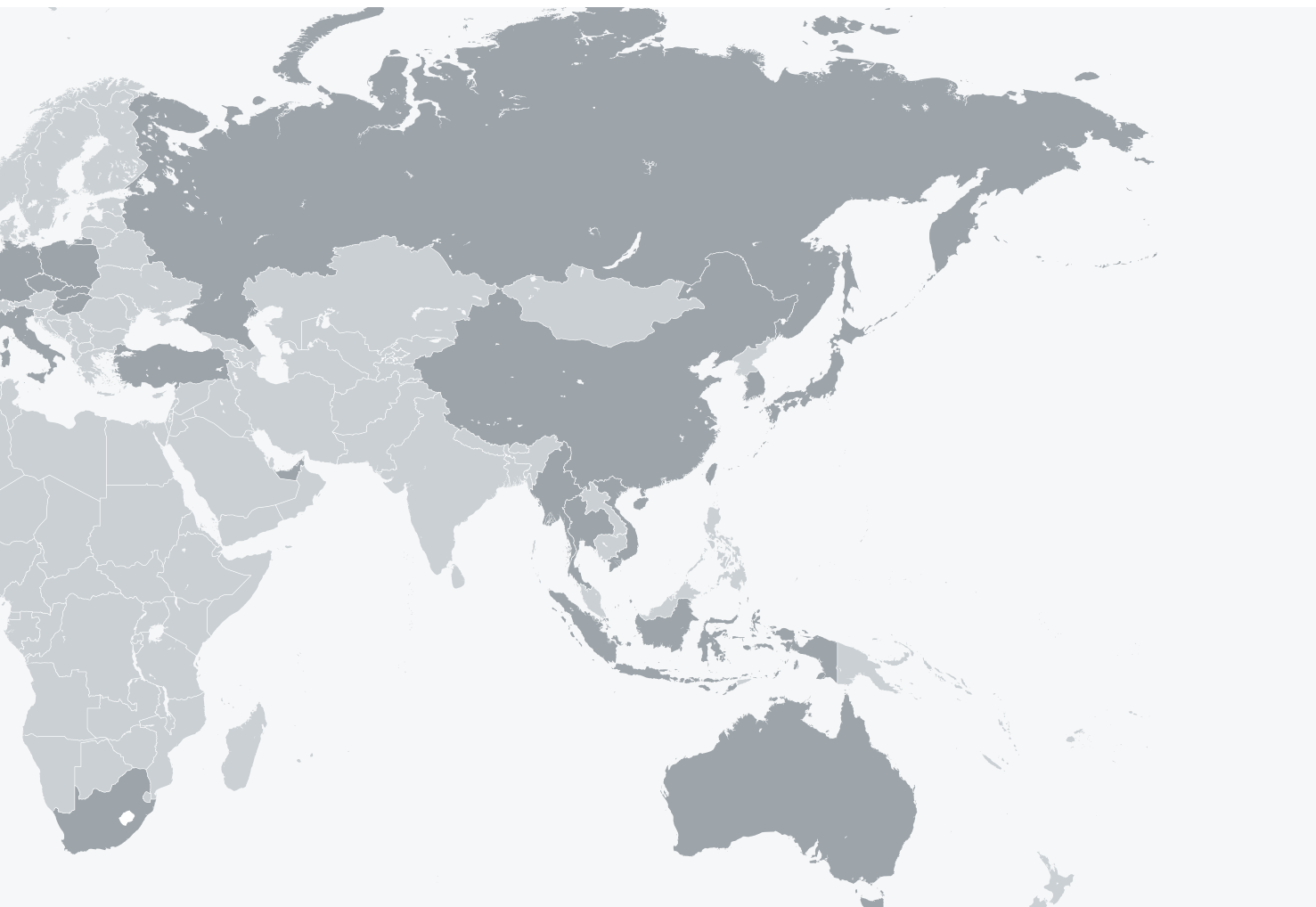
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“As an international player, they bring a whole range of seamless legal services to the table,” and clients praise “accessibility to partners at all times and ease of communicating.”

Chambers Global 2018 (Data protection)

“Allen & Overy has wall-to-wall competence in all areas of providing advice and practical guidance. It is responsive and practical and has the perspective of the many different multinationals that it advises, and therefore can be very strategic.”

Legal 500 2020 Data protection, Privacy and Cybersecurity



## Global presence

Allen & Overy is an international legal practice with approximately 5,800 people, including some 590 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at [www.allenoverly.com/global\\_coverage](http://www.allenoverly.com/global_coverage).

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