

## 歐盟理事會將嚴格執行資料保護基本權



歐洲理事會修訂「保護個人有關個人資料處理及自由流通規則（一般資料保護規則）」（Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), GDPR），該草案內容包括行政罰鍰三審制（three-tiered system）。凡故意或過失違反歐洲資料保護基本權之企業，情節重大者，可能招致鉅額行政罰鍰，草案之裁罰性措施將讓從業者更加重視資料保護法益。

是否對違反GDPR之侵權行為裁處罰鍰，會員國政府有裁量權限；已受刑事制裁者，政府亦得免除罰鍰以避免重複處罰。資料保護主管機關（data protection authorities, DPAs）依三審制判斷，確保所裁處罰鍰具有效性、比例性及嚇阻性。三審制包括：第一審，是否對資料當事人之資料要求延遲、變更回應；第二審，是否對資料當事人、DPAs盡資訊透明義務；第三審，各種具體侵權行為，包括對於資料取得缺乏法律依據、未能即時告知資料違反情事，或未採取適當安全防衛措施於歐盟以外區域傳遞資料等。

依草案，DPAs審酌罰鍰額度時，應依下列計算罰鍰：

- (1) 企業故意或過失未能於一定期間內，回應資料當事人之資料查閱請求者，裁處上一會計年度全球總年營業額0.5%罰鍰。
- (2) 企業故意或過失未能提供任何或所有符合資料當事人要求之必要資訊；或未能對消費者充分揭露個人資料蒐集、處理的目的者，裁處上一會計年度全球總年營業額1%罰鍰。
- (3) 企業故意或過失未能維護消費者權益，更正或刪除消費者資料，違反GDPR所保障之消費者「被遺忘權」者，裁處上一會計年度全球總年營業額1%罰鍰。
- (4) 企業故意或過失處理個人資料，行為不具適法性、違反法規、沒有對當事人通知資料違反或將個人資料傳遞自歐盟以外區域，該區域沒有適當安全資料保護者，就企業上一會計年度全球總年營業額裁處2%罰鍰。

六月中旬，歐盟各部長將就歐洲議會、歐盟理事會的提案，就罰鍰額度進行最後協商，未來將持續關注草案協商後續發展。

### 相關連結

- [Council of EU, Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such](#)
- [Out-Law, Three-tiered system of data protection fines being considered by EU law makers, says leaked document](#)
- [Paul Van den Bulck, EU Council Confirms the Forthcoming Strong Enforcement of Fundamental Right to Data Protection, Password Protected](#)

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資料來源：

Paul Van den Bulck, EU Council Confirms the Forthcoming Strong Enforcement of Fundamental Right to Data Protection, Password Protected,

[http://www.passwordprotectedlaw.com/2015/05/strong\\_eucouncil\\_enforcement/?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=View-Original](http://www.passwordprotectedlaw.com/2015/05/strong_eucouncil_enforcement/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original) (last visited May 29, 2015)

Out-Law, Three-tiered system of data protection fines being considered by EU law makers, says leaked document, [http://www.out-](http://www.out-law.com/en/articles/2015/may/three-tiered-system-of-data-protection-fines-being-considered-by-eu-law-makers-says-leaked-document/)

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Council of EU, Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) - Chapter VIII, COM/2012/011, available at

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