

European Regulatory Actions Pressure U.S. Companies and Regulators

By Shaheen Pasha

Europe's aggressive stance on regulating technology companies and tech-heavy innovation that may affect consumers is putting pressure on U.S. corporations and law firms to ensure compliance. It also could create a roadmap for U.S. regulators to pass more stringent laws in line with their European counterparts.

Unlike U.S. regulatory bodies, which place the responsibility of ensuring data security and privacy on individual consumers and companies, Europe has long had a more socialist philosophy on regulation.

"Socialist governments are more focused on the rights of individuals, and the threats and risks they may be exposed to where it is the government's role in society to mitigate those risks," said Daniel Messeloff, partner at Tucker Ellis. "In the United States' capitalist and free-market society, there is a stronger belief that companies will monitor themselves in the best interest of their consumers, so the government doesn't need to act as quickly or aggressively."

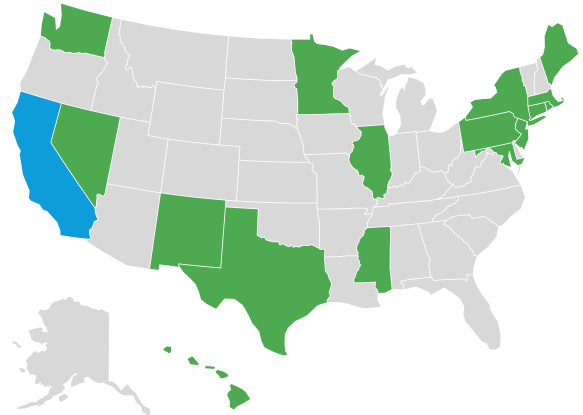
But trying to operate as a corporation in an international market leaves little room for differences in philosophy and can have global repercussions. Europe's General Data Protection Regulation — one of the most comprehensive data protection laws in the world — is a good example. The law, which took effect in 2018, grants data protection rights to individuals whose data is processed in the European Union or who reside in the EU, even temporarily.

The move sent many U.S. corporations scrambling to fall into compliance or risk being fined or pushed out of the EU market.

"There is no question that the goal posts have moved considerably, for example per GDPR, in terms of European laws and regulations, which will now impact U.S. businesses in ways they have never before," said Rafi Azim-Khan, head of data privacy at Pillsbury Law. "Those rule changes were driven by a perception by both EU lawmakers and enforcers that many U.S. businesses were operating in a way that generated significant profit and revenue from Europe but did so in a way that many thought was ignoring local laws."

The regulation has spurred similar laws in the U.S. The California Consumer Privacy Act is slated to become one of the toughest privacy laws in the country, mirroring key elements of its European counterpart when it comes to transparency in how companies collect, use, and disclose personal information.

States Considering GDPR-Inspired Privacy Legislation



The California Consumer Privacy Act goes into effect in January 2020.
Source: Bloomberg Law

More states are considering proposals similar to the California Consumer Privacy Act, according to Bloomberg Law.

The law, which goes into effect in January 2020, will impact roughly 500,000 businesses that collect and sell personal information or disclose it for business purposes, according to the International Association of Privacy Professionals. And many see California as just the beginning. According to [Bloomberg Law](#), Massachusetts, Rhode Island, New York, and Washington are among those states floating similar proposals.

Tucker Ellis' Messeloff said European regulatory decisions have been influential on U.S. policies, and as a result, the legal industry is beefing up its own practices to meet the demand of clients hoping to navigate the evolving environment.

"Companies that don't adequately protect their customers' information ... and companies that don't comply with the growing number of state, federal, and global regulations over these issues will be subject to fines and penalties, and potentially criminal prosecution," Messeloff said. "In response to these concerns, there will be heightened demand for lawyers who understand both the technical aspects of cybersecurity and data privacy and who are able to assist companies managing those concerns."

But an increased focus on global regulation, spurred in part by Europe's more stringent policies, could hurt technology innovation, said Juscelino F. Colares, associate dean for global legal studies and Schott-van den Eynden professor of business law at Case Western Reserve University School of Law.

"Most of the time, Europe has a tendency to overregulate, which can be detrimental," he said. "That gets reflected in slower economic growth in Europe and a lack of industry leaders. They're not creating champions in entire industrial sectors, like technology."

Colares added that while it may be tempting for state lawmakers to add more European-style, pro-consumer regulation, care needs to be taken that it doesn't restrict or impede interstate flow of trade or creativity — particularly in the strong U.S. tech sector, which needs innovation to be internationally competitive.

Facebook, for instance, is already feeling the impact of Europe's regulatory hardline. The tech giant's launch of its new digital currency, Libra, has become uncertain due to ongoing discussions with regulators, according to a report by Bloomberg Law.

Regulators in Europe and the U.S. have expressed concern over potential misuse of the digital currency platform in the wake of Facebook's abuse of 2.7 billion users' data. The platform is also taking hits from regulators over antitrust concerns and fears it could compete with global currencies. Such regulatory scrutiny is already impacting the proposed cryptocurrency, with major partners such as Visa and Mastercard cutting ties with the project.

And cryptocurrency, as well as blockchain, which facilitates the use of such payment technology, won't be the only areas to be scrutinized going forward. Maarten Stassen, partner at Crowell & Moring, said he expects artificial intelligence to be a hot-button topic among regulators, over concerns that it may result in various forms of discrimination among consumers. Digital advertising will also be a key area of concern to ensure transparency.

That scrutiny by regulators will likely spill over into the U.S. and create a state of uncertainty for U.S. companies operating on both sides of the Atlantic, creating more work for legal experts to manage potential risks, Colares said.

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"There's nothing worse for a business than not to know when a new regulation is going to come, how strict it's going to be, and what the cost of compliance will be," he said. "Law firms are managing the risks they can manage, but on some levels, they are operating in a realm of uncertainty when it comes to regulation."

Shaheen Pasha is a writer and journalism professor, focusing on legal and financial issues.