

Life stuck in the middle

Taking a globalized approach to privacy

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Welcome and introductions



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Clever Inc. : A Privacy Hypothetical

- I. Welcome and introductions
- II. Overview
- III. Clever Inc. – Fact pattern
- IV. Scenario 1 – Launching a new product
- V. Scenario 2 – Engaging a new vendor
- VI. Scenario 3 – Data breach!

You're hired

- Congrats! You've just been hired as the Chief Privacy Officer of Clever Inc.
- Key Features of Clever Inc.
 - Headquartered in Chicago, IL
 - Manufactures, markets, and sells Clever consumer goods direct to consumers through its website and through resellers.
 - Employees in Illinois, Manchester, England (back-office), and China (manufacturing).
 - Sells and markets products throughout the US, UK, EU and APAC.
 - A financial services affiliate provides financing and related insurance and warranty products.
 - Data, including personal information, is available and regularly transferred between global offices.

Scenario 1: Launching a new product

- The business has come up with their cleverest product yet and wants it to be BIG
 - Will launch product in the US
 - Integrates biometrics to enhance security
 - Marketing team wants to use existing and purchased data to market the new product on social media and through direct communications.
 - Plans to release a virtual version in the metaverse
- *What issues and challenges are you dealing with?*

Scenario 1: Key takeaways

1. Have a defined philosophy – a guiding principle through overlapping regimes
2. Have a process to understand your data – geography, consent, limits on use
3. Train business on how overlapping regimes potentially impact them
4. As lawyers, be there early and make sure to be tech fluent

Scenario 2: Engaging a new vendor

- The business is keen to engage a new SaaS vendor
 - A cloud-based data analytics and visualization product
 - Will ingest and analyze consumer, employee, and supply-chain data.
 - AI driven data insights
- *What issues and challenges are you dealing with?*

Scenario 2: Key takeaways

1. Identify key risks and requirements – pick your battles
2. Have a framework for assessing new regimes

Scenario 3: Data breach!

- You've got a breach!
 - Affects consumer data in US, UK, and EU
 - ~50k affected individuals spread across the jurisdictions
- *What issues and challenges are you dealing with?*

Scenario 3: Key takeaways

1. Have a framework to assess what requirements apply
2. Drive the story you want to tell
3. Strive for Consistent, Coordinated Communications

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Flagging the issues

Helping you prepare for GDPR

Global reach – As the global regulatory environment continues to increase in complexity and volatility, our 100+ team members provide depth and breadth of coverage internationally.

International reach and local knowledge – we have deep knowledge of US, UK and EU privacy and cybersecurity laws and regulations, as well as in most jurisdictions around the world including China, Singapore and the Middle East.

Deep sector knowledge – there are no one-size-fits-all solution, and companies, as well as industry sectors, require specifically tailored advice.

Our team has vast experience in advising on:

- developing strategic compliance globally
- data analytics
- AI
- launching new products through to day-to-day queries
- supporting litigation, human resource, IT and sales & marketing endeavours
- handling any breach responses or enforcement actions

Business enabling – we deliver clear legal solutions to enable the widest range of options for decision-makers.

Business-focused – from increasing pressures on GCs and CISOs, to heightened threats and regulatory uncertainty and “cyber fatigue,” we bring greater clarity, simplicity and even opportunity.

Battle tested – if a breach occurs, we have a deep bench of experienced professionals to calmly handle every aspect. This includes notifications and regulatory actions as well as the most complex, bet-the-company litigation and even congressional or parliamentary investigations/inquiries.

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Highly respected
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100+

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Privacy law lawyers



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has offices



65+

offices across Africa,
Asia, EU, the Middle
East and the US

GDPR

GDPR is new, EU-wide data protection legislation to replace the current 20-year-old EU data protection laws. It aims to “future-proof” laws against technological developments, and it hopes to harmonize data privacy laws across the EU. It requires greater transparency and accountability from companies, and imposes greater privacy protections for individuals. Regulators have a range of significant sanctions to enforce compliance.

Your key contact



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Paula Barrett is “*exceptionally commercial and very knowledgeable in the area of data privacy*”.

Chambers & Partners 2018

GDPR is not the only changing element in the European data protection landscape. With the proposal for a new e-Privacy Regulation, which will cover requirements for collecting location and traffic data as well as changes to requirements for marketing consents and preferences to be detailed, as well as ongoing litigation and political scrutiny over how personal data is transferred outside the European Economic Area, businesses really need to keep on top of developments which will have a very real impact on their business processes.

Is it all pain or is there also promise?

Your organization can use GDPR to:

- take a lead in the market, showing clients, customers and staff that you are aware and able to comply with these new requirements and expectations
- distinguish you from those organizations who fail to adapt to these new standards

Although the new requirements will be challenging and require some investment of time and cost, they also present new business and service opportunities.

What does GDPR compliance require?

GDPR requires a new approach to privacy and the protection of personal details and their use. Organizations will be expected to plan for privacy and integrate the principle of data minimization into their business processes.

By law, systems, products and processes will need to be designed for privacy by design and by default. Additionally:

- any collection and use of personal details will need to be transparent
- privacy policies will need to be clear and contain far more detail by law than is often currently provided
- use of personal data (which is broader than PII) will need to be based on specific, limited lawful use grounds and comply with stronger individual rights to ensure organizations are accountable for their use of personal details
- the use of consent will be far more regulated and will be harder to obtain and rely upon
- security will remain critical and there will be new requirements to ensure data storage and retention is clear in advance, as are data transfers to outside the EU and the basis on which they are made, such as Privacy Shield
- systems and processes will need to be able to cope with individuals exercising their GDPR rights, such as the rights to be forgotten, of erasure, and data portability

Above all, businesses will now be expected to know what personal data they are:

- collecting, sharing and using
- why it is needed
- what it is used for
- why that is lawful
- how long it will be kept for
- where it goes around the world

There will be a new legal obligation to have appropriate policies and to keep records to demonstrate how the organization complies with GDPR requirements.

How we can help

Eversheds Sutherland have already been entrusted by clients across a spectrum of regulated and non-regulated sectors to work with them on their GDPR programmes, helping them to plan, budget and implement their compliance projects, as well as assessing their strategy and response to the change in risk profile.

Our integrated team can provide analysis and practical solutions and assist your business in gearing up as GDPR takes effect. We will help you understand the impact it will have on your business and how to prepare in a pragmatic and phased way.

We have tried and tested practical advice on:

- territorial scope and application
- transparency, notices and policies
- data processor obligations
- data security and breach reporting
- international data transfers
- governance (privacy impact assessments, data protection officers and more)
- record retention
- profiling
- data subjects’ rights (including privacy notices, complaints and claims)
- non-compliance: enforcement and sanctions

Range of services

Advising – top to bottom: advising international clients on GDPR programme, including prioritisation of work streams as well as delivery of specific components

Contract strategy – advising clients on third party contract strategy for the adoption of GDPR terms

Marketing consents – advising clients on marketing consents in light of forthcoming changes in direct marketing and GDPR rules

Analysis – risk management for GDPR, including parent company liability and governance structure for an international telecoms and cloud services provider, and developing a liability model

Data audits – conducting audits for clients across several sectors to enable them to understanding processing and to act as foundation for production of other compliance documentation

Expertise workshops – providing workshops on particular topics to support clients operational working groups in defining the requirements and sense-checking solutions proposed

Create – policies and procedures to align with GDPR and operational reality

Drafting – GDPR privacy notices for staff, customers and others

Drafting – GDPR data controller to controller and joint clauses to be adopted in client’s standard terms

Privacy impact assessment – assisting clients to create privacy impact assessments templates in anticipation of GDPR and conducting impact assessments such as on new products

Records retention and destruction – reviewing strategies for responding to practical difficulties with legacy systems and creating or refreshing international policies

Transfers – regulating transfers within group structures and advising on BCR and Privacy Shield

Project team – stakeholder and employee training: we have vast experience in delivering training sessions on the impacts of GDPR across a range of sectors. We offer training to project teams, directors and front-line employees and that can be tailored to your sector and individual business requirements

GDPR readiness assessment – privacy health checks of compliance work undertaken

Website reviews – including privacy notices and cookies policies to check a user’s journey against GDPR requirements. We can also perform a sample social media review in the same way

Data mapping service – we have a dedicated consulting division, Eversheds Sutherland Consulting, which provides full data mapping services to enable our clients to understand what data they hold, the purposes for which it is held and the data flows relating to it

“I would have no hesitation in recommending them to others as a very professional team offering sound legal advice with pragmatic solutions, and at very good value for money.”

Chambers & Partners 2018

Privacy experience

- advising plc on adoption of a cloud-based HR system including notices to staff, filings, contracts with vendors, interaction with German, Dutch and French works councils and staff training across EMEA, Asia and South America
- advising several aerospace and other sector clients on the interplay of export control and data protection rules, so as to achieve compliance in both spheres
- advising a global technology business on background checking of staff and candidates across 80+ countries around the globe
- helping an international software and services business respond to a cyber security attack which resulted in loss of customer data and in particular on its reporting requirements to individuals and regulators in 10 jurisdictions across Europe, Asia, Africa and the US. The initial advice was provided on the initial call and then followed up within 12 hours in writing
- assisting a consultancy services provider with a pan European audit, assistance with privacy wording in forms, policies and contracts with clients and staff, pan European ethical reporting policy advice and assistance with privacy requirements and documentation re: client projects including international e-discovery and litigation, and safe harbor certification
- advising multiple clients on the roll out of ethical reporting tools in compliance with data protection rules
- advising vehicle manufacturer on new connected car platform across 30+ countries
- advising a life sciences business on its strategic review of reuse of medical device information to create new data offering
- advising a life sciences business on its privacy notices and consents across several European countries for clinicians and patients
- undertaking a multinational privacy governance review in conjunction with our consulting practice for an international Vehicle manufacturer
- assisting with labour law disputes with trades unions and works councils where privacy law has been deployed as a tactical “weapon”
- advising on transfers of data (or the risk of access to the same resulting, typically, from changes in IT systems or vendors) to regulators or other parties engaged in litigation outside of the EEA with other group members
- advising a security software and services vendor on the data privacy compliance issues it needed to address in its data loss prevention product development and sales process to overcome barriers to sales in Europe
- advising an international aviation business on its job application policy. We have also advised the same client on a variety of other matters including shared service arrangements
- advising pharmaceutical companies in successful attempts to prevent a regulatory body from disclosing confidential and sensitive details from regulatory applications following Freedom of Information requests

- advising Dupont, Walt Disney and many others on record retention policies across EMEA, Asia Pacific and parts of South America
- defend clients against enforcement action, challenge decisions of regulator, including litigation before the Spanish Data Protection Agency on sanction procedures
- assisting several UK banks with GDPR compliance, including a review of fair processing notices, updating their product terms, and managing the update of their back book of existing supplier contracts
- we have conducted a detailed privacy impact assessment (PIA) on a GDPR “Privacy by Design” basis for a regulated consumer business and have developed a GDPR PIA template for a high street bank. In particular, we have worked on developing a specific template GDPR PIA for the audit, analysis and implementation of IT software and the related services provision framework and call off arrangement (including dealing with potential issues relating to sub-contracting and cloud hosting).
- we have prepared a detailed strategic risk analysis report to the Board of a separate regulated FTSE group on GDPR, alongside details of our recommended steps for risk mitigation
- negotiating GDPR supplier terms for a GDPR compliant CRM system and development of a user preference centre
- we prepared and delivered bespoke GDPR training to a specially set up GDPR steering committee of a multi-national regulated business client and their business critical digital infrastructure provider as they worked together to address concerns and potential future pitfalls
- we have provided a two-day privacy workshop in the US to an industrial sector multinational to facilitate compliance and solutions around proposed IT solution for data management and export control compliance, including GDPR analysis
- developing a GDPR compliant member fair processing notice for large pension provider
- assisting with the GDPR analysis and selection of lawful use grounds of HR data for a large financial sector client
- updating customer-facing fair processing notices of a financial services institution to meet the GDPR standard, including in respect of additional data subject rights
- working with a global payments processor to agree and implement arrangements to facilitate the cross-border export from its UK affiliates to US parents, including advice on controller to controller EU model clauses with merchant customers
- advising a major UK financial institution on data privacy aspects regarding its outsourcing of a customer-facing online loan platform

“Their client service is top-notch. They are highly skilled attorneys, but they also understand business and technology; they are counsellors, not just lawyers.”

Chambers & Partners 2018

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View our GDPR hub to find our more information:
www.eversheds-sutherland.com/gdpr

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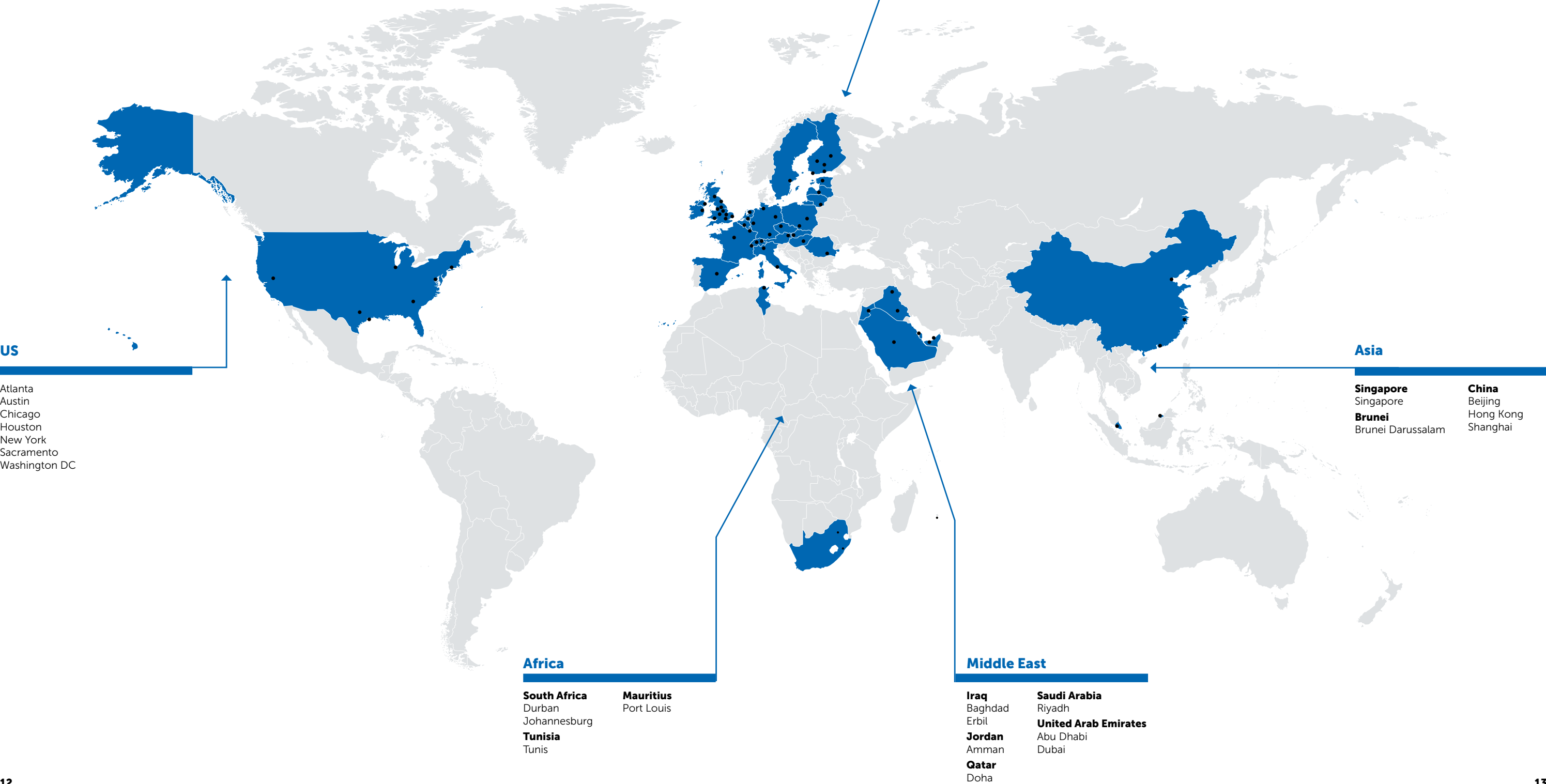
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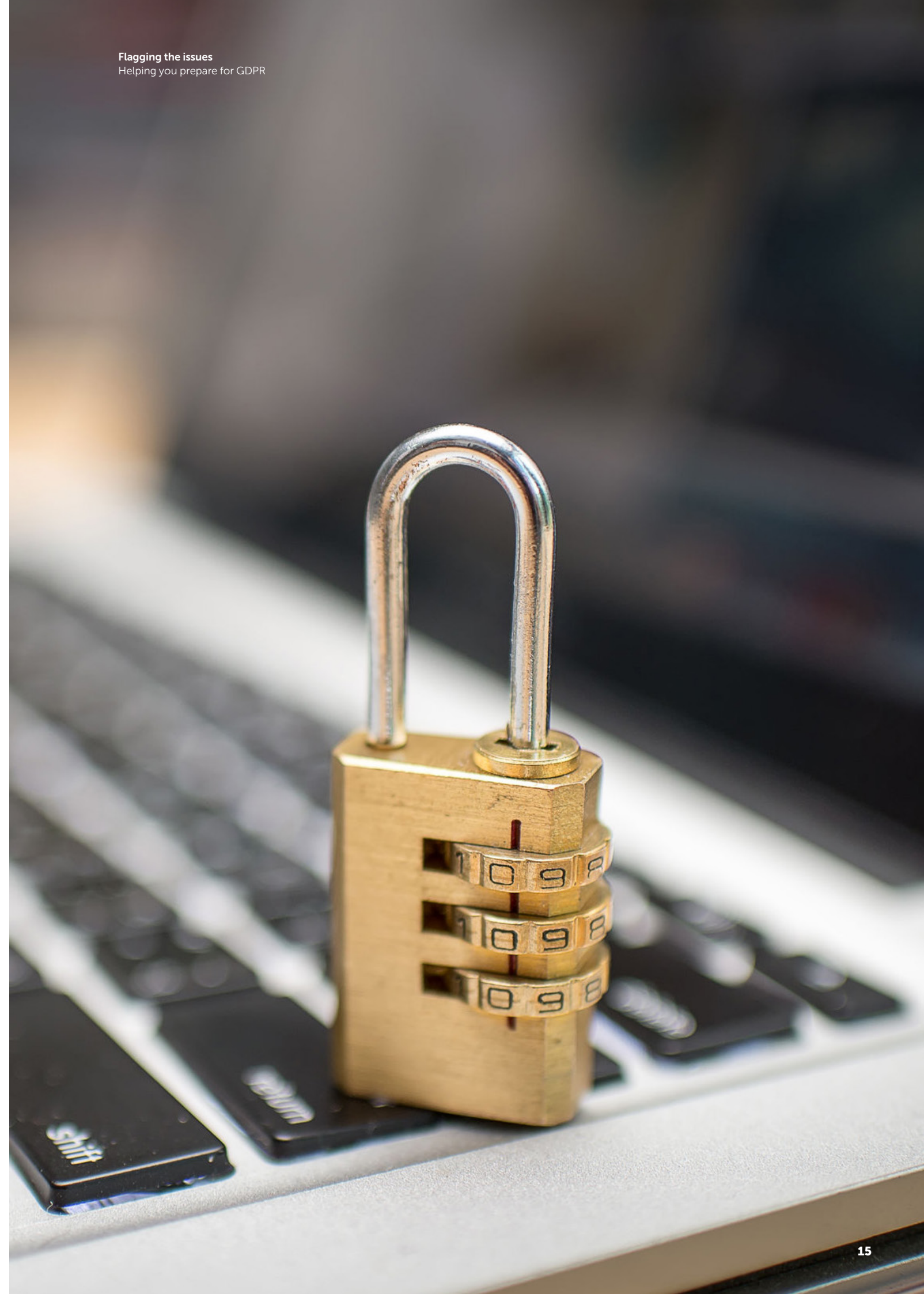


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