

GENERAL DATA PROTECTION REGULATION (GDPR)

The GDPR introduces far reaching obligations for companies that collect, use or otherwise process personal information.

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What is the GDPR?

- The GDPR is the EU's reform of its privacy framework.
- Currently, the EU's privacy framework consists of a bundle of national data privacy laws.
- The GDPR will introduce a single framework that is directly applicable in all EU Member States; however, a large number of national customizations remain possible.
- The GDPR contains the same six core data protection principles, but there are significant changes and additional requirements. For example, it will be more difficult to obtain valid consent.

Enforcement

- Data Protection Authorities (DPAs) will have the power to levy fines of increasing levels of severity, up to **EUR 20 million or 4% of a company's group global annual turnover** of the past financial year.
- DPAs have a wide range of other powers, such as on-site audit rights and imposing temporary or definite limitations including a ban on processing.
- Broad rights for individuals, including the ability to:
 - Lodge complaints with DPA in the Member State of his/her residency.
 - Engage in group litigation.
- Individuals can sue for compensation for both material and non-material damages (e.g. distress).

To whom does the GDPR apply?

- Companies established **in the EU** that process personal information;
- Companies based **outside the EU** that:
 - **offer goods or services directly to individuals** in the EU (regardless of whether payment is required), or
 - **monitor behavior of individuals** in the EU, for instance through customer profiling.

New compliance obligations

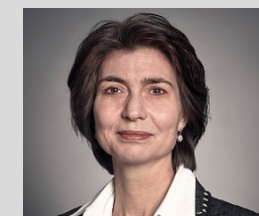
- Direct obligations for **processors** who process data on the instructions of a controller.
- The duty to appoint a **Data Protection Officer (DPO)** in certain cases.
- A general **accountability requirement**, requiring a company to be able to demonstrate compliance with the GDPR.
- The duty to carry out **Data Privacy Impact Assessments (DPIAs)** in cases of high-risk processing activities, and potentially to consult a data protection authority (DPA).
- The requirement to keep **records** of all data processings.
- Responding to broadened rights of individuals such as the **right to be forgotten** and the **right to data portability**.
- Complying with specific restrictions and limitations on **profiling**.
- The notification of **data security breaches** to individuals and DPAs within 72 hours.

How Can We Help You?

- Getting ready for the GDPR will be different for every company and will be dependent on many factors.
- MoFo has extensive experience helping companies across industries, including B2B or B2C organizations, as well as service providers (i.e. data processors).
- We can help you with every phase of GDPR preparedness, such as performing a GDPR gap-analysis, formulating and/or implementing your compliance plan, or helping you with your overall privacy compliance program.
- We would be delighted to further discuss how we can assist with your organization's specific needs.

We're here to help. We're MoFo, in Europe.

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Timeline to Prepare for GDPR

25 May 2016

GDPR formally adopted.
Companies not yet
required to comply.

2016

Establish GDPR readiness plan.

2016/2017

Execute GDPR readiness plan.

25 May 2018

GDPR directly applicable
to companies.

A PRACTICAL GUIDE TO YOUR OBLIGATIONS

Key elements of GDPR readiness programs

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Privacy Compliance Program

AWARENESS

- Start by ensuring that decision makers and key people in your organization are aware of the GDPR and what this means for the company.
- Form a GDPR core team to develop and execute your readiness plan.

DUE DILIGENCE & GAP-ANALYSIS

- Assess which data processings are subject to the GDPR.
- Create system, database, and dataflow inventories in preparation for compliance obligations.
- Inventory global data transfers.
- Assess which data processing activities warrant appointment of DPO and require a DPIA to be carried out.
- Assess which authority will be your Lead-DPA.

NOTICES & AGREEMENTS

- Update your customer- and employee-facing privacy notices.
- Verify whether you can rely on consent and update your consent statements to comply with new consent requirements.
- Update agreements and templates with third-party service providers.
- Verify your data transfer agreements or other transfer mechanisms.

COMPLIANCE OBLIGATIONS

- Set up or revise your DPIA checklists and procedures.
- Address your record keeping obligations (including the legal basis for processing personal information).
- Review and update your data retention policy, including to account for data minimization.
- Implement privacy-by-design and privacy-by-default into your working principles.
- If applicable: appoint your DPO.

INTERNAL PROCEDURES

- Implement a procedure to address data security breaches, including the ability to make notifications where required.
- Update your internal processes to address and be able to respond to individuals' new rights.

TRAINING

- Provide general training and awareness on GDPR compliance throughout the organization.
- Educate and train specific key stakeholders, such as IT, HR, Marketing, Audit, Procurement, Risk & Compliance, and Privacy Officers.

Specific Areas of Attention

- ✓ The GDPR also applies when data are **pseudonymized** or when online identifiers are used, such as **cookies** and **IP-addresses**.
- ✓ When you monitor the **behaviour** of individuals for commercial purposes, engage in **profiling**, or (re-)use information for **analytics** purposes, specific restrictions and limitations apply.
- ✓ When you process personal information of **minors** (< 16 years), specific requirements apply.
- ✓ When you are a **supplier** that qualifies as a data processor, there will be new obligations that are directly applicable to you and you may have to renegotiate your customer agreements.
- ✓ When you hold data provided to you by individuals (such as personal information stored in the cloud or posted to social media), you should specifically prepare for this **information to be portable** in a machine-readable format at the end of the contract or when consent is withdrawn.