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Risk

Regulation

Cyber security

The General Data Protection Regulation (GDPR)

Supporting your business for ongoing monitoring and compliance with the GDPR

What is the GDPR and how it affects our businesses?

The General Data Protection Regulation (GDPR) is the European Union's (EU) new data protection law that came into effect on 25 May 2018.

Implemented throughout the EU, it governs all businesses operating within the union and embeded a more consistent approach to data protection. Companies that trade with EU-based businesses have be impacted and need to know the requirements and how to comply.

Penalties for non-compliance can be up to €20 million or 4% of annual global turnover – whichever is greater.

So why was the data protection legislation transformed?

Since 1995, the Data Protection Directive (Directive 95/46/EC) has determined how individuals' personal data is protected within the EU. However, since its inception there have been vast developments in the sophistication and scale of data creation and gathering – for example through the emergence of social media, cloud computing and geolocation services. As the directive predates these developments, it was no longer suitable to govern the current data landscape; it needed to be refreshed to address modern privacy concerns and facilitate consistency across the EU. This is what the GDPR does.

The GDPR introduced a huge range of changes. Underlying this shift is the EU's ongoing agenda to safeguard its citizens and their private information. The GDPR established new rights for individuals and strengthen current protections by applying stricter requirements to the way businesses use personal data. If they fail to comply, the sanctions significantly larger.

What this means for your business

The GDPR is a valuable opportunity to understand your business's data and use it more effectively. However, it requires strict adherence to the new regulation and a clear understanding of the changes in order to avoid large penalties.

First, it's critical to be aware that the GDPR supersedes all existing data protection acts, and that it increases businesses' obligations around data protection and their accountability for failure. It also applies across the full spectrum of data engagement – from the collection of personal data through to its use and disposal. Your organisation needs to embed policies and procedures to ensure that it monitors its GDPR controls and documents its compliance.

The rules apply to organisations of any size that process personal data. Whatever the nature of your organisation, the GDPR has a substantial impact.

All global organisations, both those in the EU and those that trade with EU companies, are required to comply with the GDPR.

Understanding the core changes & challenges

The GDPR introduced wide-ranging changes that require thorough understanding, internal stakeholder acceptance, appropriate preparation and implementation across the whole business. To provide an overview, we've addressed some of the key changes here.

Better rights for data subjects

The largest shift is that individuals benefited from greatly enhanced rights, for example, the right to object to certain types of profiling and automated decision-making. Consent requirements are also more stringent. Consent must be explicit and affirmative, it must be given for a specific purpose and it must be easy to retract. Individuals can also request that personal data is deleted or removed if there isn't a persuasive reason for its continued processing.

Increased accountability

Organisations have far more responsibility and obligation. They need to publish more detailed fair processing notices – informing individuals of their data protection rights, explaining how their information is being used and specifying for how long. The regulation embeds the concept of privacy by design, meaning organisations must design data protection into new business processes and systems.

Formal risk management processes

Organisations must formally identify emerging privacy risks, particularly those associated with new projects, or where there are significant data processing activities. They must also maintain registers of their processing activities and create internal inventories. For high-risk data processing activities, Data Protection Impact Assessments (DPIAs) will be mandatory. It will also be compulsory to appoint a Data Protection Officer (DPO).

Reporting data breaches

As part of the drive for greater accountability, data breach reporting has become stricter. If a significant data breach occurs, it must be reported to the Data Protection Commissioner within 72 hours and, in some cases, to the individual affected without undue delay.

Significant sanctions

Penalties for non-compliance with the GDPR have risen considerably, up to €10 million or 2% of annual global turnover (whichever is greater) for minor or technical breaches, and €20 million or 4% of turnover for more serious operational failures.

Data processing requirements

The regulation imposed new requirements on data processors, and includes elements that should be addressed contractually between data processors and data controllers.

Key features of the GDPR:

Enhanced rights for data subjects – the right to object to certain types of profiling and automated decision-making, and to request that unnecessary personal data is deleted.

Enhanced obligations for organisations – such as publishing detailed fair processing notices to inform individuals of their data protection rights, the way their information is used and for how long.

Stringent consent requirements – consent must be explicit, freely given for a specific purpose and easy to retract.

Stricter breach reporting – significant data breaches must be reported to regulators within 72 hours and sometimes the individual, too.

Increased privacy impact assessments – organisations must formally identify emerging privacy risks, particularly for new projects.

Privacy by design – organisations must design data protection into new and existing business processes and systems.

Increased record keeping – organisations must maintain registers of the processing activities they carry out, with mandatory DPIAs for high-risk data processing.

Significant penalties – the potential size of fines for non-compliance are considerable, reaching €20million or up to 4% of turnover, whichever is greater.

Appointing DPOs – appointing a data protection officer is mandatory for many organisations.

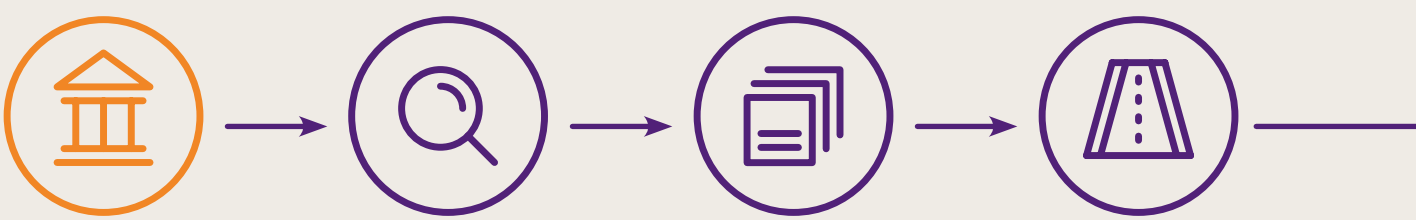
Wider regulatory scope – the new regulation applys to both the data controller and the processor.

How to prepare your business

The legal landscape of data protection is evolving rapidly, and presenting challenges for businesses, government and public authorities. If your organisation is consumer-facing, online, in the financial services sector or in possession of sensitive personal data it may be particularly affected.

You'll need to scrutinise the regulatory changes and understand how they will affect your regulatory changes and understand how they will affect your business operations. Bear in mind that the impact of GDPR isn't confined to a specific area of your business – it requires business-wide adoption of a more process-orientated approach.

You'll need to amend your business practices to become compliant with this regulation, and implement new controls. So where should you start? We've created a simple visual, below, to help structure your approach to achieve compliance.



GDPR

- Understand the key challenges

Data protection quick check

- Assess your organisation's current data architecture, processes, and risk and compliance controls

Audit results and analysis

- Identify the current data risks in your business
- Review how ready your business is for the GDPR

Implementation roadmap

- Develop an implementation roadmap that embeds suitable regulatory and compliance architecture
- Ensure the plan is realistic and achievable for your organisation

Implementation

- Appoint a trusted advisor to:
  - identify and document data processing activities
  - carry out data impact assessments
  - develop a data breach response action plan
  - implement ongoing data protection processes.
- Write a detailed data protection policy and define a standard that ensures your business will meet the GDPR
- Where necessary, appoint a data protection officer and/or a data protection management system for ongoing control

Measure data protection effectiveness

- Undertake a GDPR FIT/GAP analysis or ISO 27001 FIT/GAP analysis – this is an assessment of the effectiveness of your GDPR efforts

Continuous improvement

- Hold regular GDPR audits and Data Privacy Impact Assessments
- Ensure data risk management is integrated into your overall risk management structure
- Regularly review your organisation's data protection training needs
- Assess your systems via undertaking IT Audits, Penetrations and vulnerability assess

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