



OFFICE RULE #1
**KEEP IT
CONFIDENTIAL** ✓

The European General Data Protection Regulation

What does the data protection regulation mean for you and your business?



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What is the GDPR all about?

**SECURE DATA
BY SHREDDING***
*Be compliant with the
European General Data
Protection Regulation
(GDPR)



The European Union (EU) has changed its data protection rules. The changes came into being on 25 May 2018 and are now law across the EU

These new rules are called the **General Data Protection Regulation (GDPR)** and apply across the board from public authorities to small and medium-sized businesses.

These changes will affect the way we all do business. This White Paper gives you a basic introduction to the GDPR and especially how it affects office working.

What is EU data protection?

In the EU there are existing legal rules for the collection and processing of personal data. Anyone who collects or processes personal data must protect it from misuse and comply with a range of legal requirements. The GDPR upgrades the existing rules.

Do these new rules apply to electronic data and hard copies?

Yes. The GDPR will apply to electronic data (like emails and databases) and to hard copies (with a few exceptions). This means that we also have responsibilities with paper-based files – we need to keep them secure and securely dispose of them (for example with a cross cut paper shredder) when we don't need them any more.



What kind of fines can my business face for breaching the rules?

Under the new regime data protection regulators can impose high fines for infringing the new rules - the highest level of fine is either a maximum of €20 million or 4% of the global annual turnover of a business, whichever is the higher. Although not every breach will result in the highest fine, getting fined is simply not an option – we must all make sure that we follow the rules.

Will businesses have to do more?

Yes. Every organisation will have more responsibilities and obligations under the new rules. In particular, organisations have to implement technical and organisational measures to make sure that they are processing data properly. To assess the right level of security you must consider the risks that are presented by processing – especially from accidental or unlawful destruction. You will also have to be able to show the measures you have taken when a regulator asks you what these measures are. An important part of that is checking who you send personal data to – for example you will also need to check the processes of people you work with like mailing houses, shredding companies and temp agencies.

Are there any examples of cases where people have got things wrong?

The lesson for failure to comply can be painful. Recently, the UK data protection regulator, the Information Commissioner's Office (ICO), **fined a local authority £100,000** for failing to have security measures in place to guard against the accidental loss or destruction of data where documents containing personal data of around 100 people (including adults and children in vulnerable circumstances) were found by the purchaser of a disused building previously used by the council. This happened when the local authority moved out of the building leaving some of their documents behind when they moved.

In Holland, some public transport operators were fined by the data protection regulator because they kept some transaction data longer than necessary. The operators were initially told by the regulator to either delete the transaction data or anonymise it – the operators decided to keep the data and anonymise it, but the anonymisation techniques were not sufficient in at least one case and as a consequence one operator had to pay a **fine of €125,000**.

In Spain there have been several enforcement cases by the data protection regulator where documentation containing personal data was dumped in waste bins or in the street – in at least one case the documentation was only partially shredded and in other cases the dumping was due to the failure to shred or properly destroy the documents.

Will I have to put data protection at the heart of what I do?

Yes. Privacy must be built in to all of your processes. Businesses will have to put in place ways of making sure that, by default, only personal data which needs to be processed is processed.

As a result you'll have to ask yourself:

- Do I need this personal data?
- Do I need to process it for this purpose?
- Does everyone who has access need access (for example if only HR should see the papers should they be locked in a filing cabinet with only HR having keys)?
- Is data out of date?



Data which you don't need any more
should be securely destroyed

Will consent be required for data processing?

Yes. Generally-speaking there must be a legitimate reason for processing personal data. If consent is being relied on to process data, under the new rules a person's consent must be freely given, specific, informed and unambiguous. Silence, opt-outs or inactivity can't be relied on and instead an active process such as box-ticking will have to be put in place. Businesses must also be able to demonstrate that consent has actually been given. Make certain that you have processes in place that meet all of these requirements.

Are there any new rights?

Yes. A series of new rights have been introduced including:

- The Right To Be Forgotten – this allows people to ask for their personal data to be deleted;
- The Right To Data Portability – this allows people to ask for their personal data held in a commonly used format to be transferred; and,
- The Right To Object – this includes allowing people to object to being profiled. Where personal data is processed for direct marketing that can also be objected to.

Implementing these new rights will be challenging for organisations, although it should also be emphasised that all these new rights are qualified, i.e. there are some exceptions, for which legal advice should be taken.

What about people asking to see their data?

The right for people to see their data, which is technically called a Subject Access Requests (SAR), continues under the new rules. This process allows anyone to exercise their right to gain access to data held on them. Under the new rules SARs must be answered within one month of receipt of the SAR (although there could be an extension for a maximum of two further months in some circumstances), and, the ability for a business to ask for a

fee to respond to a SAR has been abolished. There has been a significant rise in the number of SARs being made in recent years – when SARs become free an even greater rise in SARs can be expected. Given the rise in email and cloud applications in particular, SARs are also now more costly and complex to deal with.

An essential part of any organisation's future data protection strategy will therefore be putting proper processes in place to deal with SARs.



Will I need to appoint a data protection officer?

Possibly. Under the GDPR public authorities must appoint a data protection officer (DPO), and, a DPO will also have to be appointed for businesses to deal with data protection compliance in some circumstances. Again it is best to take legal advice on this, depending on what you do and where you do it. Given the significance of privacy compliance today even if technically speaking a DPO is not required, even a medium sized business that regularly processes data should consider appointing one anyway.



Will I have to report data breaches?

Yes. Ensuring that data is secure is one of the backbones of the new rules including addressing data breaches.

What constitutes a data breach covers many situations including destruction, loss, alteration, unauthorised disclosure of, or access to, personal data.

Breaches will have to be reported (including what action has been done to mitigate them) to the relevant data protection regulator without undue delay and (where feasible) not later than 72 hours after becoming aware of the breach.

People affected by the breach must also be told about the breach without undue delay (but no official time-limit has been set) when the breach is likely to result in a high risk for their rights and freedoms. There are some limited exceptions to both reporting to a regulator and informing people, for which proper legal advice should be sought.

Data breach reporting is made more complicated still by:

- The fact that some countries (including Austria, Germany and the Netherlands) already have their own data breach reporting obligations;
- Data breach reporting may be required under other rules and regulations, particularly in the financial and health sectors; and,
- Additional separate legislation to be implemented across the EU in line with the EU Cyber Security Directive –
for more details on this see here - www.corderycompliance.com/eu-cyber-security-rules-adopted/



What about liability and compensation?

As a general principle, anyone who has suffered damage due to an infringement of the new rules has a right to compensation from those controlling or processing the personal data in question for the damage suffered, subject to some exceptions. Because of the extra risk that a data infringement may now bring under the new rules, especially a data breach, businesses will need to do the maximum to minimise the potential for compensation claims.

Businesses must put in place a clear data breach action-plan and policy as a top priority

Will some kind of privacy impact assessments have to be made?

Yes. Under the new rules these assessments are called Data Protection Impact Assessments (DPIAs). Where data processing operations (in particular those using new technologies) are likely to result in a high risk for people's rights and freedoms, an impact assessment of the proposed processing operations on the protection of personal data must be carried out – this must be done prior to the processing.

A data protection regulator must be consulted (also prior to processing) where an assessment indicates that the processing would result in a high risk in the absence of measures taken to mitigate the risk.



DPIAs are likely to become common and should prove to be a very useful tool for businesses in addressing privacy risks, including assessing data security risk and the consideration of risks presented by personal data processing such as accidental or unlawful destruction.

Has anything changed with data transfers to third countries?

Not really. Special existing rules about the transfer of data from EU Member States to third countries (including the US) remain in place under the GDPR, including the requirement that those data transfers can only occur where an adequate level of protection is assured by these third countries. Under the new regime these rules have in effect just become more detailed. This is a complicated topic that is also subject to development under the existing data protection rules which you should talk through with your legal team.

Where can I find out more?

The new rules are available on the European Commission's website



What should I do now?

To do the work to be GDPR-compliant you must budget and plan resources (including IT). Also use your planning time well to adapt. The following are ten top compliance issues to start addressing:

- 1** Put in place a privacy impact assessment process – map your data and determine areas of risk;
- 2** Thoroughly review vendor contracts – you will need your vendors' help especially in reporting security breaches very quickly and so make sure that you have the contractual rights to insist on this;
- 3** Update systems and materials and prepare new detailed documentation and records ready for production for regulatory inspection;
- 4** Review key practical aspects including data retention with all the data used by the business;
- 5** Make sure you have plans in place to securely destroy data that you don't need;
- 6** Ensure that new aspects such as explicit consent, the right to be forgotten, the data portability right, and, the right to object are all included in policies and procedures;
- 7** Put in place a data breach notification procedure, including detection and response capabilities, and rehearse this like you would a fire drill;
- 8** Consider appointing a data protection officer;
- 9** Training, training, training - train staff on all of the above (data protection regulators pay special attention to this); and,
- 10** Set up and undertake regular compliance audits in order to identify and rectify issues.

Expertise

Jonathan Armstrong and **André Bywater** at **Cordery Compliance** have considerable experience in advising on GDPR matters and helped us form this whitepaper.

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