

The GDPR at a glance, and a “to do” list to help you prepare for it

The General Data Protection Regulation (GDPR) promises the biggest shake up to European privacy laws for 20 years. It will apply in all European Member States from 25 May 2018.

The GDPR will not only bring a step change in sanctions, with fines of up to 4% of annual worldwide turnover or €20 million, but will also change the way your customers and others expect you to handle their personal information.

Businesses based in the UK should continue to prepare for the GDPR, notwithstanding Brexit. It is likely that the rules in the GDPR will still be applied to the UK for the short to medium term. Moreover, if your business deals with individuals in the rest of EU, you will be caught by the extra-territorial provisions in the GDPR. Similarly, if parts of your business are established in the rest of the EU, those establishments will be directly subject to the GDPR.

This leaflet summarises the key changes under the GDPR, as well as offering a “to do” list to help you prepare for 2018. The changes needed to comply with the GDPR are significant, and you should start to prepare for them now.

We have also produced a Survival Guide on the GDPR which considers all of these issues in much greater detail.

The Survival Guide is available at www.linklaters.com/GDPR.



Tanguy Van Overstraeten
Global Head of Data Protection
Tel: (+32) 2 501 94 05
tanguy.van_overstraeten@linklaters.com









Richard Cumbley
Global Head of TMT/IP
Tel: (+44) 20 7456 4681
richard.cumbley@linklaters.com



Daniel Pauly
Partner
Tel: (+49) 69 710 03 570
daniel.pauly@linklaters.com



At a glance: what you need to know, what you need to do

Area	 Countdown to 2018	 Extra-territorial reach	 Core rules remain the same	 Consent	 Data subjects' rights	 Accountability
Summary of Regulation	<ul style="list-style-type: none"> > The GDPR will apply in all Member States from 25 May 2018. > Businesses that carry out crossborder processing should be primarily subject to the regulator in the jurisdiction in which they have their main establishment. 	<ul style="list-style-type: none"> > The GDPR primarily applies to businesses established in the EU. > It will also apply to businesses based outside the EU that offer goods and services to, or monitor individuals in, the EU. 	<ul style="list-style-type: none"> > The GDPR retains the same core rules as the existing Data Protection Directive but there are some significant changes to those rules. > The concept of sensitive personal data has been retained and expanded to include genetic and biometric data. Using information about criminal offences will also be harder to justify. 	<ul style="list-style-type: none"> > It will be much harder for you to obtain a valid consent under the GDPR. Individuals can also withdraw consent at any time. > Consent to process sensitive personal data or to transfer personal data outside the EU must be explicit. > However, you will not always need consent. There are other justifications. 	<ul style="list-style-type: none"> > There are also potentially significant new rights for individuals, including the “right to be forgotten” and the right to data portability. > The new rights are complex and it is not clear how they will operate in practice. 	<ul style="list-style-type: none"> > Under the GDPR, you must not only comply but also be able to demonstrate you comply. > If you are carrying out “high risk” processing, you must carry out a privacy impact assessment and, in some cases, consult your regulator. This could have significant timing implications for your project.
“To do” list	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Work out where your main establishment is and who your lead regulator will be. <input checked="" type="checkbox"/> Keep track of guidance issued by regulators and the European Data Protection Board. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Evaluate if your business (if established outside the EU) is nonetheless caught by the GDPR. If you are caught, you may need to appoint an EU representative. <input checked="" type="checkbox"/> Consider if you want to take steps to avoid being subject to the GDPR. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Review your existing compliance. <input checked="" type="checkbox"/> Work out if you are processing genetic or biometric information or information about criminal offences. If so, bring that processing into line with the new requirements of the GDPR. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Review your existing processes to obtain consent to determine if they are valid under the GDPR. <input checked="" type="checkbox"/> Consider if you can rely on an alternative basis for processing, especially in light of the right to withdraw consent. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Consider if individuals are likely to exercise their new rights against you and what they mean for your business in practice. <input checked="" type="checkbox"/> Based on that analysis, set up processes to capture, record and act on those requests. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> You will need to create and maintain a record of the processing you are carrying out (unless exempt). <input checked="" type="checkbox"/> You should adapt your product development processes to include a privacy impact assessment.



Privacy notices

- > The GDPR increases the amount of information you need to include in your privacy notices.
- > Those notices must also be concise and intelligible.

- ☑ You will have to update your existing privacy notices.
- ☑ You should use the most effective way to inform individuals of your processing, such as layered or just-in-time notices.



Data protection officers

- > You may be obliged to appoint a data protection officer.
- > The data protection officer must be involved in all data protection issues and must report directly to the highest level of management within your organisation.

- ☑ Work out if you need to appoint a data protection officer or want to appoint one on a voluntary basis.
- ☑ Consider if you want to appoint a single data protection officer for the whole of your business.



Data security

- > You must keep personal data secure. This obligation is expressed in general terms but does indicate that some enhanced measures, such as encryption, may be needed.
- > You may have to report security breaches to the regulator and, in some cases, to individuals.

- ☑ Consider setting up a central breach management unit to collate, review and notify breaches, where appropriate.
- ☑ Review and update your security measures in light of the increased security obligations in the GDPR.



Processors

- > You will need to include new obligations in contracts with your data processors.
- > Some aspects of the GDPR are directly applicable to processors. This will be a major change for some suppliers who were previously not subject to data protection law.

- ☑ If you are a controller, update your contracts with processors to reflect the new contract requirements.
- ☑ If you are a processor, consider the implications of becoming directly subject to the GDPR.



Transfers outside the Union

- > The GDPR prohibits the transfer of personal data outside the EU, unless certain conditions are met. These conditions are broadly the same as those under the existing Data Protection Directive.
- > Full compliance with these rules will continue to be difficult and requests from foreign regulators will be challenging.

- ☑ Review your current transfers and consider if they are justified now and will continue to be justified under the GDPR.
- ☑ You should consider implementing a "structural" transfer solution (such as Binding corporate rules or an intragroup agreement) to justify your transfers.



Sanctions

- > There is a step change in sanctions. Regulators will be able to issue fines of up to 4% of annual worldwide turnover or €20 million.
- > Individuals can sue you for compensation to recover both material damage and non-material damage (e.g. distress).

- ☑ Review your current level of compliance and bring it up to the level required under the GDPR.
- ☑ Consider your overall attitude to risk and consider creating a risk assessment framework.

Contacts

Brussels



Tanguy Van Overstraeten
Tel: (+32) 2 501 94 05
tanguy.van_overstraeten@linklaters.com

Moscow



Evgeny Ulumdzhev
Tel: (+7) 495 797 9797
evgeny.ulumdzhev@linklaters.com

Frankfurt



Daniel Pauly
Tel: (+49) 69 710 03 570
daniel.pauly@linklaters.com

Munich



Konrad Berger
Tel: (+49) 89 418 08 168
konrad.berger@linklaters.com

Hong Kong



Samantha Cornelius
Tel: (+852) 2901 5542
samantha.cornelius@linklaters.com

Paris



Sonia Cissé
Tel: (+33) 1 56 43 57 29
sonia.cisse@linklaters.com

Lisbon



Carlos Pinto Correia
Tel: (+351) 21 864 00 15 5015
carlos.correia@linklaters.com

Singapore



Adrian Fisher
Tel: (+65) 6692 5856
adrian.fisher@linklaters.com

London



Richard Cumbley
Tel: (+44) 20 7456 4681
richard.cumbley@linklaters.com

Stockholm



Elisabet Lundgren
Tel: (+46) 8 665 67 77
elisabet.lundgren@linklaters.com

Luxembourg



Olivier Reisch
Tel: (+352) 2608 8294
olivier.reisch@linklaters.com

Tokyo



Mamiko Nagai
Tel: (+81) 3 6212 1232
mamiko.nagai@linklaters.com

Madrid



Carmen Burgos
Tel: (+34) 91 399 6088
carmen.burgos@linklaters.com

Warsaw



Agnieszka Mencil
Tel: (+48) 225 265 045
agnieszka.mencil@linklaters.com

linklaters.com

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications.

A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

Please refer to www.linklaters.com/regulation for important information on our regulatory position.