

Territorial scope



“Conquer we shall, but, we must first contend! It’s not the fight that crowns us, but the end.”

Robert Herrick, 17th Century English Poet

The territorial scope of the GDPR is set out at Article 3 which provides for a very broad definition:

- 1. “This Regulation applies to the processing of personal data in the context of activities of an establishment of a controller or a processor in the [European] Union.**
- 2. This Regulation applies to the processing of personal data of data subjects who are in the [European] Union by a controller or processor not established in the [European] Union, where the processing activities are related to:**
the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the [European] Union; or, the monitoring of their behaviour, as far as their behaviour takes place in the European Union .
- 3. This Regulation applies to the processing of personal data by a controller not established in the [European] Union, but in a place where the national law of a Member State applies by virtue of international law.”**

European businesses

Businesses that are established in a Member State plainly fall under the terms of the European General Data Protection Regulation (“GDPR”), in the same way that they currently fall within the remit of the Data Protection Directive.

Businesses outside of the EU

The terms of the GDPR mean that many more entities will now fall under the regime. Unlike under the current regime, the GDPR allows for any business located anywhere in the world to fall under its terms if a business offers goods or services in the EU or monitors the behaviour of EU citizens, irrespective of whether it has a presence in Europe.

Obligation to appoint a representative

Under Article 25, a business from outside the EU that falls under the GDPR regime because of its activity with regard to the citizens of a Member State is under an obligation to appoint a representative in that Member State, unless processing is occasional and does not include large scale processing of sensitive data (such as racial origin, health data, genetic data, criminal convictions, and suchlike) and is unlikely to result in a risk for the rights and freedoms of individuals. The purpose of the representative will be to act as a point of contact for the entity’s Data Protection Officer.

Problem areas

This aspect of the GDPR potentially puts a great deal of non-EU businesses into the harsh regulatory environment of the new regime. Many entities have simply not considered: (a) whether they do fall under the terms of the GDPR; and, if so: (b) how they need to react or respond in order to be compliant.

This is likely to catch the overwhelming number of non-EU online services that process the data of their EU based consumers. It will also apply to the numerous online providers and advertisers that place cookies or other tracking tokens on the equipment of EU data subjects for the purpose of tracking their online behaviour.

The “Compliance Journey” involves innumerable challenges and the task is complicated. Entities may find that they have difficult choices to make about their priorities moving forward. Making changes to ensure compliance with the GDPR will require considerable resource investments and lots of planning, especially for non-EU entities, that may not have considered these issues fully before.

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