

EU GDPR – OVERVIEW FOR INDIAN ORGANISATIONS

GDPR –Timeline

- The General Data Protection Regulation (GDPR) was passed by the European Commission on 27 April 2016, with a view to replace the earlier 1995 Data Protection Directive.
- GDPR becomes applicable from 25 May 2018 and aims to create harmonised data protection framework across the European Union (EU).

Does it apply to Indian establishments?

Yes – if such Indian establishments:

- offer goods or services to EU data subjects, regardless of whether payment in respect of the goods or services is required to be made to the data subjects or not;
- monitors behaviour of EU data subjects so far as their behaviour takes place within EU.

Indian IT/ BPO companies and other companies (processor or controller) dealing with personal data of EU data subjects will need to comply with GDPR by the deadline of 25 May 2018.

Key Considerations and Changes under GDPR

Scope	Extra-territorial applicability – irrespective of location of the establishment.
Personal Data	Scope of 'personal data' has widened – includes location data, biometric, online identifiers, etc.
Increased data subject rights	Right to access, erasure, withdraw, edit data, object or seek restriction on processing of personal data have been included.
Consent	Consent for processing personal data must be clear and distinguishable from other matters and provided in an intelligible and easily accessible form, using clear and plain language and must have a direct relationship to the purpose for which the data is collected.
Information notices	All controllers are required to provide users with certain information such as purpose for processing personal data, rights of users, if there is transfer of personal data outside EU; period of storage of personal data, etc.
Obligations	Detailed obligations on controllers and processors to ensure GDPR compliance by taking suitable technological and organisational measures.

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Records	Any controller that employs 250 persons or more must maintain records of processing activity, in writing (including electronic form).
Breach Notification	Data breach notification within 72 hours to supervisory authorities and to users without undue delay.
Data Transfers	Data transfers are subject to an adequacy decision by the European Commission, or adequate safeguards, or binding corporate rules framed under the GDPR, or without complying with any of the aforesaid in certain specific situations.
DPOs	Appointment of Data Protection Officers (DPOs) required in certain cases (for example large scale processing of personal data, etc.)
Representative	Controllers and processors not in EU need to designate a representative based in EU unless exempted in certain cases.

Consequences for non-compliances

- Penalty of a maximum of 4% of annual worldwide turnover of the preceding financial year or Euro 20 million, whichever is higher, for serious breaches, such as not having sufficient customer consent to process data, violating the core of privacy by design concepts, etc.
- Penalty of a maximum of 2% of annual worldwide turnover of the preceding financial year or Euro 10 million, whichever is higher, such as for not having the records in order, not notifying the supervising authority and the data subject about a breach, not conducting a data impact assessment, etc.

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