

# The GDPR: Top 10 Key Changes

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## Extra-Territorial Scope

- The GDPR expands the territorial and material scope of EU data protection law.
- It applies to both controllers and processors established in the EU, and those outside the EU, who offer goods or services to, or monitor EU data subjects.

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## One Stop Shop

- The GDPR introduces a 'lite' one stop shop mechanism.
- Multinational companies will predominantly be regulated by the supervisory authority where they have their "main establishment". However, other "concerned" authorities may also be involved in handling complaints about them.

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## Data Processors

- The GDPR imposes direct statutory obligations on data processors, which means they will be subject to direct enforcement by supervisory authorities, fines, and compensation claims by data subjects. However, a processor's liability will be limited to the extent that it has not complied with its statutory and contractual obligations.
- It expands the mandatory terms which must be included in processing contracts.

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## Accountability

- The GDPR introduces a new concept of accountability, which requires you to be able to demonstrate how you comply with the GDPR.
- You must keep detailed records of your processing activities and implement appropriate technological and organisational measures to ensure, and be able to demonstrate, that processing is performed in accordance with the GDPR.

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## Privacy Notices

- The GDPR increases the amount of information that you must provide to data subjects when collecting their personal data, to ensure that your processing activities are fair and transparent.
- You must provide the information in an easily accessible form, using clear and plain language.

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## Consent

- The GDPR introduces a higher bar for relying on consent.
- The difference between consent and explicit consent is less clear, both now require some form of clear affirmative action. Silence, pre-ticked boxes or inactivity will not be sufficient to constitute consent.
- Data subjects can withdraw their consent at any time, and it must be easy for them to do so.

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## Individuals' Rights

- The GDPR provides individuals with new and enhanced rights, including a right to data portability, and a right not to be subject to a decision based on profiling, in certain circumstances.
- Data subjects will have more control over the processing of their personal data.
- A data subject access request can only be refused if it is manifestly unfounded or excessive, in particular because of its repetitive character. However, Member States may introduce national derogations to further restrict the right of access.

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## Breach Notification

- If you are a controller, you will have a mandatory obligation to notify your supervisory authority of a data breach within 72 hours, unless the breach is unlikely to result in a risk to the rights of data subjects. You will also have to notify affected data subjects where the breach is likely to result in a "high risk" to their rights.
- If you are a processor, you will only be obliged to report data breaches to controllers.

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## International Data Transfers

- Data transfers to countries outside the EEA continue to be prohibited unless that country ensures an adequate level of protection. The GDPR retains existing transfer mechanisms, and provides for additional mechanisms, including approved codes of conduct and certification schemes.
- The GDPR prohibits any non-EU court, tribunal or regulator from ordering the disclosure of personal data from EU companies unless it requests such disclosure under an international agreement, such as a mutual legal assistance treaty.

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## Sanctions

- The GDPR provides supervisory authorities with wide-ranging powers to enforce compliance, including the power to impose significant fines. You will face fines of up to €20m or 4% of your total worldwide annual turnover of the preceding financial year. In addition, data subjects can sue you for pecuniary or non-pecuniary damages (i.e. distress).
- Supervisory authorities will have a discretion as to whether to impose a fine, and the level of that fine.

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