

CLIENT ALERT

European Data Privacy Regulations Now May Extend to U.S. Businesses

A new law in the European Union may have application to U.S. businesses. The European Union has taken the position that the protection of personal data is a fundamental right. As such, the European Union, over the years, has adopted regulations concerning the collection, processing, and use of personally identifiable information. The latest iteration, known as the GDPR (General Data Protection Regulations), went into effect on May 25, 2018. One significant change from previous privacy regulations is that processors of personal data outside the European Union now may be subject to the GDPR. Below are answers to frequently asked questions about the GDPR. Each business' situation will be different depending on its collection and use of personal data.

What is considered to be “processing personal data”?

The European Union takes a more expansive view of what comprises “personal data” compared to the United States, and defines personal data to cover any information that can be related back to an individual person, including information such as names and identification numbers. However, data generally not considered to be personal data in the United States, such as Internet protocol (“IP”) addresses and browser cookies, would be considered personal data under the GDPR if associated with an individual person.

“Processing” is also defined very broadly to include collecting, recording, organizing, or storing personal data. Examples of processing personal data would include collecting e-mail addresses for use with marketing e-mails, storing individual's names as part of a membership log, or using an individual's IP address in order to determine visitor statistics for website analytics.

Does the GDPR apply to my business?

Businesses that have established offices in the European Union are obvious candidates for being subject to the GDPR. However, other business activities involving the use of personal data collected from the European Union may implicate the GDPR, even if the activities are performed in the United States such as the following:

- actively offering goods and/or services to persons in the European Union, including any marketing email
- tracking behavior of persons in the European Union who are accessing your website
- processing personal data collected by another organization that is subject to the GDPR

For example, if an individual within the EU subscribes to your organization's electronic newsletter or purchases a product from your organization's website, the GDPR may be applicable to your organization.

What is the impact of the GDPR?

The GDPR requires implementation of certain data protection requirements. These requirements may require review and revision of the following:

- privacy policies, to notify individuals whose data is being processed of their rights
- data security practices, to comply with minimum standards, including documentation
- contractual relationships with clients and vendors who process personal data, to ensure all in the processing chain are in compliance

What are the consequences of non-compliance?

Each member state of the European Union has its own supervisory authority to enforce the regulations. Each supervisory authority has the power to conduct its own investigations and impose sanctions. If a complaint is made by an individual to a supervisory authority, it will have the power to engage in legal proceedings. Noncompliance may result in fines up to 20 million Euros or up to 4% of total worldwide annual turnover (*i.e.*, revenue), whichever is higher.

The above is a general overview of some of the provisions of the GDPR. Hahn Loeser has experience in auditing, drafting and modifying data privacy policies, evaluating data security practices, and drafting contracts with provisions dealing with data privacy rights and responsibilities. If you believe that you or your business may be affected by the GDPR, or have questions about requirements of the GDPR, please feel free to contact your Hahn Loeser attorney.