



GDPR Readiness in 2017

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EU General Data Protection Regulation: May 25, 2018

- > Reaffirms some existing EU legal requirements regarding protection of personal data ; Adds some others
- > Huge potential penalties for non-compliance: up to 2% or 4% annual global revenues, depending on provision violated
- > Of the 99 GDPR directives, infringement of 51 will result in some sort of enormous penalty
 - Infringement of 20 will result in levy of 10M Euro/ 2%
 - Infringement of 31 will result in levy of 20M Euro/ 4%

EU General Data Protection Regulation

- > Reduction of administrative burden
 - National registrations & prior authorization registrations will be abolished
 - BUT each data controller (& processor) will have to maintain detailed records of its data processing activities
- > If my company is based outside the EU does the GDPR apply?

Threshold Questions

- > Company is US-based only
 - No operations or employees in the EU or UK
 - No marketing or targeting of EU citizens
 - EU citizens find business on the internet
 - EU citizens voluntarily provide data
 - No problem: Articles are 25 and 26 of Directive 95/46/EC and 45, 46 and 49 of the GDPR
 - An individual that is transferring, sharing or processing its own personal data is however neither a “controller” nor a “processor”.

Threshold questions

- > Business is headquartered in the US
- > Business has sales locations in Paris and Luxembourg
- > Total employee count in the EU is 15 and for the company is 125
- > Yes, the GDPR will apply to cross border transfers between Paris and Luxembourg
- > And, the GDPR will govern international transfer of data to the US and other countries
- > Certain GDPR exemptions will apply because under 250 employees (e.g., Accountability requirements)

Summary

- > 1) Under current EU data protection law, a business will not be subject to EU data protection laws as long as it does not use any processor located or equipment situated within the EU (see Article 4 of Directive 95/46/EC).
- > In 2018, question will be different: Is entity established in the EU/EEA, processing personal data, whether or not the processing takes place in the EU/EEA?
- > 2) Under GDPR (i.e. as of 25 May 2018), a business will be subject to EU data protection laws only if it is “offering” its services to EU citizens (see Article 3 of the GDPR).

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