

GDPR

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The General Data Protection Regulation ("GDPR") is applicable in all EU Member States since 2018. It replaces the 1995 Directive and substantially modifies the current legal benchmark on the matter, the French Data Protection Act of 1978.

It applies to :

Any company or administration based or operating within the EU territory; any provider offering goods or services to any person within the EU territory; or merely "observing" their behaviour; has to abide by the GDPR, even if it is not itself established within the territory of the EU (in which case a local representative must be appointed).

As soon as processing of personal data is involved, all companies are concerned, no matter what their business line consists of (e.g. a company deploying a payroll management system, a group exchanging customer or employee personal data with its subsidiaries, a provider developing a CRM tool, an insurance company relocating the management of its IT services, etc.).

What has changed? Simplified Administrative Procedures

End of Prior Formalities

Unless stated otherwise, it will no longer be necessary to make declarations or request an authorisation prior to the implementation of personal data processing. Companies must be able to justify the level of protection of personal data at all times (principle of accountability).

«One-Stop Shop»

The companies will only be in contact with the data protection authority of their "main establishment", designated as the "lead" authority, and will only have one point of contact within the European Union.

Accountability of all Actors

The data controller shall put appropriate measures (technical and organisational) in place, in particular:

- Setting up and maintaining a register of processing activities;
- **Notifying security breaches**;
- Protecting the personal data from the very design of the data services and architecture (**privacy by design**) and by default (principle of "minimizing" the data processed);
- Conducting impact assessments prior to the implementation of any risky process of personal data ("Privacy Impact Assessments" or "PIA");
- The designation of a data protection officer.

The data processor has specific obligations:

- Advising the data controller (PIA, loopholes, safeguarding the personal data, data destruction, contribution to audits);
- Guaranteeing the security and confidentiality of the personal data;
- Setting up and maintaining a register of all data processing activities.

The GDPR provides for the development of codes of conduct and the establishment of certificates, labels and trademarks to assist in demonstrating compliance with data protection rules.

Strengthening Individuals' Rights

Creating New Rights

In addition to the traditional rights already recognized to natural persons by the French Data Protection Act of 1978, the GDPR also grants new rights: the right to **erasure** and **to be forgotten**; the right to the **portability** of personal data; the right to restriction of processing; the right to seek compensation for material or moral damage; introduction of class actions, etc.

Consent

The consent of individuals must result from positive, unequivocal and easily revocable acts. **The data controller must be able to provide evidence of the materialisation of the person's consent**, which requires the involvement of all services within the undertaking concerned (not only the DPO's).



Data Security and Reporting Violations

The protection of personal data also addresses IT security. The data controller and any data processor must ensure appropriate security and confidentiality measures (pseudonymisation, encryption, quick data recovery abilities, etc.). The company's tools as well as those it acquires from third parties must meet the new requirements.

If a personal data breach is witnessed, it must be notified as soon as possible:

- For the data controller: to the competent supervisory authority and in some cases to the individuals concerned;
- For the data processor: to the data controller.

Cross-Border Transfers of Personal Data Outside the EU

These transfers are still possible. However, new tools are provided to the existing ones in order to ensure a more thorough expertise.

The Data Protection Officer (DPO), compliance maestro

Their designation is mandatory if:

- The data processing is carried out by a public authority or a public body; or
- The core activities of the data controller or processor:
 - require regular and systematic monitoring on a large scale of data subjects concerned;
 - consist in a **large-scale processing of so-called «sensitive» personal data**.

The DPO has replaced the CIL in France. Held by professional secrecy and with the necessary powers, the DPO will be the main point of contact between the company and the supervisory authority.

Graduated and Strengthened Penalties

The penalties, thus far capped at 150 000 euros, can amount, upon the entry into force of the GDPR, to **10 or 20 million euros, or 2-4% of the company's world annual turnover** (the highest amount being withheld).

Our Services

Whatever your business sector (private or public), regardless of the type of personal data you process (customer data, health data, bank data, employee data, etc.) and regardless of the location of your subsidiaries abroad (EU or non-EU), DS AVOCATS is one of the few French law firms able to offer its clients **cross-jurisdictional and multijurisdictional legal expertise**, with the help of the various DS offices and desks around the world.

Already with a strong experience in data protection and privacy laws, we are able to **assist our clients in their compliance projects** by putting a team of **dedicated, responsive and efficient lawyers**, with thorough knowledge of local international laws, at your service.

Our Offer is Flexible and Adapted to your Needs, your Objectives and your Budget.

The scope of our mission will depend on your current situation: (i) full compliance, (audit of the existing data processing, variance analysis, roadmap, compliance actions), (ii) guiding your internal DPO in achieving your compliance (ex: formalisation of the safeguarding repository, carrying out of a PIA/impact assessment, etc.), (iii) involving particular privacy projects (e.g. implementation of new tools, transfer of data outside the EU, etc.), (iv) support in the relations with the data protection authorities (CNIL, etc.), (v) GDPR awareness/training sessions for your teams, and/or (vi) assistance in the context of pre-proceedings or litigation (assistance in case of a control by the CNIL, following a customer's request or notice, etc.) etc.

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