



**NEW ZEALAND
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The Principles of the EU General Data Protection Regulation



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Are you doing business in Europe?

A new data privacy regulation could affect New Zealand companies doing business with European Union (EU) countries.

The General Data Protection Regulation (GDPR) is a new EU data privacy law that will come into full effect on 25 May 2018. GDPR's primary purpose is to create one coherent data protection framework across the EU. In doing this, GDPR substantially enhances data protection and privacy rights for persons in the EU, and imposes a comprehensive set of principles and obligations with which a lot of organisations operating or offering products and services in the EU must comply.

Why is it important for New Zealand companies?

EU partners will ask New Zealand companies about their preparedness, as all affected organisations must be GDPR-compliant before it comes into effect on 25 May 2018. Most partners in the EU will expect New Zealand companies to have a compliance plan already in place.

This new legally binding law replaces and expands on an earlier non-binding EU directive. Companies that do not comply with GDPR could face sanctions of up to 4 percent of their global turnover or up to EUR 20 million.

Are there different regulations for companies with a presence in the European Union and those without a presence?

The short answer is the same rules apply regardless of where the operations are based. However, if companies are affected by GDPR and do not have a direct presence in the EU, they will now be required to designate a representative in the EU. This representative will have to carry out various compliance duties on behalf of the company.

Will companies based in the United Kingdom (UK) be affected even though Brexit is on the way?

Yes, as the United Kingdom is still part of the European Union at the time the regulation comes into effect. It is also expected that the United Kingdom will fully adopt GDPR into its domestic law following Brexit, meaning an identical or substantially similar regulation will apply.

What is the main change from the current status quo?

The main change is the territorial reach of GDPR going beyond the borders of the European Union. GDPR will apply to the processing of personal data by controllers and processors in the EU, regardless of whether the processing takes place in the EU or not.

This change will not just affect New Zealand businesses with operations and office in the EU, but any company dealing with the personal data of EU residents.

Useful definitions:

- 'Personal data' could be anything from a name, a photo, an email address, a computer IP address or health information, for instance. Data processing could be anything from obtaining, recording or holding the data or carrying out any actions with it.
- Under GDPR, 'data controller' means the organisation "which [...] determines the purposes and means of the processing of personal data".
- 'Data processor' means the organisation "which processes personal data on behalf of the controller". Unlike the old data privacy directive, the GDPR will affect data processors, as it will place them under obligation to comply with certain data protection requirements that only applied to data controllers before.

There are six general principles of data privacy under the GDPR:

1. Lawfulness, fairness, and transparency of data processing
2. Purpose limitation: personal data should be collected for specific, explicit and legitimate purposes
3. Data minimisation: only personal data relevant to the specific purpose should be saved and processed
4. Accuracy of data: any inaccurate personal data should be corrected or deleted. Where necessary, data must be kept up to date.
5. Retention of data: data must be kept in an identifiable format and no longer than necessary
6. Integrity and confidentiality: data must be kept secure

When are companies allowed to process personal data?

When one of the following conditions applies:

- Consent is given by the individual – note that the request for consent must be in an accessible form in clear and plain language. Important: companies do not necessarily need the consent of individuals, if one of the other processing conditions applies. In most cases it is actually not advised to ask for consent.
- Data processing is necessary for the performance of the contract
- Legal obligations
- Vital interests, for instance processing needed for medical emergencies
- Public function or interest
- Legitimate interest: processing is necessary for the purposes of the legitimate interests pursued by the controller or a third party

What if a company is processing data for another company?

The company needs to make sure they have a contract listing the responsibilities of each party. This will also affect companies intending to launch their services in the EU, as such companies will now need to be GDPR-compliant before they will be able to contract with established EU companies.

What can companies do to prepare for the GDPR?

- Analyse what, how and why they process data
- Assess how the new regulation might affect their current business
- Consult with relevant stakeholders: such as customers, data controllers, data processors
- Create processes: implement the GDPR into the company, set clear responsibilities
- Be transparent: be prepared to show how data is transferred and processed if asked. Put consent and privacy notes in plain language.
- Compliance: ask, how can the organisation show it is compliant?
- Responsive: requests from individuals and incidents must be dealt with within certain timeframes, for example, a notifiable breach has to be reported to the relevant supervisory authority within 72 hours.

Ultimately, New Zealand companies should get professional legal advice to prepare for the changes that come with GDPR.

For a basic overview of GDPR: [European Commission](#)

Furthermore, a lot of consultancy firms, tech organizations as well as law firms offer free material on GDPR online.



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