



## PUBLICATIONS

# Collecting personal data? Thought about GDPR?

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The European Commission's General Data Protection Regulation, 'GDPR' will come into force on 25 May 2018. It heralds some of the most stringent data protection laws in the world. In the era of data monetization, businesses that fail to pay detailed attention to legal compliance and best practice in protecting individual data will struggle to compete commercially. A new microscope has arrived.

The GDPR's scope is not limited to organisations within Europe; it contains far reaching provisions that could catch a number of organisations here in New Zealand. Below, we provide a simple diagrammatic to guide your organisation as to whether it will be caught by the wide net of the GDPR. You can also download a larger, [printable copy of the diagram here](#).

## IS GDPR APPLICABLE TO YOU?

Are you a data processor or data controller located in the EU?

yes

See note 1  no

Are you a data processor or data controller that is not located in the EU but is offering goods or services in the EU?

yes

See note 2  no

Are you a data processor or data controller that is not located in the EU but is monitoring behaviour in the EU?

yes

See note 3  no

GDPR MAY NOT APPLY

GDPR WILL APPLY

01

GDPR applies to processing of personal data 'in the context of the activities of an establishment' of any organisation within the EU. For these purposes 'establishment' implies the 'effective and real exercise of activity through stable arrangements' and 'the legal form of such arrangements...is not the determining factor'. There is a wide spectrum of what might be caught, from fully functioning subsidiary undertakings on the one hand to potentially a single individual sales representative, depending on the circumstances.

02

Even if an organisation is able to prove that it is not established within the EU, it will still be caught by GDPR if it processes personal data of people who are in the EU, where the processing activities are related 'to the offering of goods or services' (no payment is required) to such people in the EU.

03

Organisations outside the EU also will be caught by GDPR, where they monitor the behaviour of people in the EU, as far as that behaviour takes place within the EU. Internet use profiling is expressly referred to as an example of monitoring. Organisations should consider carefully whether their websites monitor traffic and track users in the EU, as this may bring them into GDPR.

### Helpful Terms

**Data Controller:** means a person or organisation that, (alone or with others) decides the purposes and the means by which personal data is to be processed.

**Data Processor:** means a person or organisation that processes personal data on behalf of a controller.

**Personal Data:** means any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

If you answered yes to any of these questions, or would like to talk more about the implications of GDPR on your organisation, we are here to help. Our global team provides assistance on all aspects of privacy compliance, implementing practical risk based solutions that align to the way your business operates, where possible turning privacy compliance into a competitive advantage.

The introduction of GDPR is imminent. The clock is ticking now and non-compliance could mean fines of up to 4% of total worldwide annual turnover .

Organisations caught by GDPR have a great deal to do between now and 25 May 2018 to be ready for the new regime.

If you would like to read more about GDPR, visit our comprehensive online summary [here](#), or download our Explore GDPR app, available on [Apple](#) and [Android](#) devices. Alternatively, call one of our team to guide you through the changes.

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