

European Commission Guidance on General Data Protection Regulation

On 24th January, the European Commission published a non-legislative 'Communication' on the General Data Protection Regulation (GDPR), together with guidance for businesses and citizens on how the new rules should be interpreted.

With only four months remaining until the GDPR becomes applicable on 25th May, the Commission has called upon EU Member States, data protection authorities and businesses to make sure they are prepared for the new rules. In particular, they point to the fact that only two of the 28 Member States have so far fully amended their procedural laws to prepare for the GDPR, and many small businesses remain unaware of the new obligations.

European Commission Communication

The European Commission's Communication ([here](#)) provides an overview of:

- 1) the changes introduced by the GDPR;
- 2) the work so far undertaken to prepare for the new rules at EU level (detailed below); and
- 3) the preparatory work that the Commission, data protection authorities and national administrations still need to carry out before the May deadline (also see below).

Preparatory work so far undertaken at EU level

The Communication notes that preparatory work has been carried out at EU level both by the European Commission and the Article 29 Working Party (the advisory body consisting representatives from the data protection authorities – DPAs – of each Member State).

The European Commission has:

- *Supported Member States:* including by establishing an Expert Group to help Member States prepare by allowing them to share experience and expertise;
- *Provided support to individual DPAs*
- *Conducted international outreach:* including by promoting the principles of the GDPR in ongoing discussion on the [Council of Europe Convention 108](#) on data protection. The Commission also notes that the **GDPR serves as a useful point of reference for several countries** (including in Asia) which are adopting new data protection legislation. It is therefore exploring the possibility of adopting adequacy decision with key trading partners, notably Japan and South Korea. The European Commission is also **working with stakeholders to help develop alternative mechanisms for international data transfers**.
- *Engaged with stakeholders:* including by participating in events and workshops, and by setting up a multi-stakeholder group to advise the Commission on awareness raising.

Meanwhile, the Article 29 Working Party (WP29) has established a number of guidelines, in consultation with stakeholders, on the application of the new rules, with work on further guidelines is ongoing.

Below is an overview of the status of WP29's work on these guidelines:

Guidelines already adopted by WP29:

- Right to data portability
- Data protection officers
- Designation of the lead Supervisory Authority
- Data protection impact assessment
- Administrative fines

Work ongoing by WP29 on following guidelines:

- Profiling
- Data breach
- Consents
- Transparency
- Certification and accreditation
- Adequacy referential
- Binding corporate rules for controllers
- Binding corporate rules for processors

Whereas both the European Commission and DPAs are producing guidance, it should be recalled that national and EU courts will ultimately be responsible for deciding upon questions of interpretation.

Remaining preparatory work

The Communication lists a number of outstanding steps that need to be taken in order to prepare successfully for the application of the GDPR. These include:

- *Adaptation of national legislation by Member States:* of the 28 EU Member States, only Austria and Germany have so far adapted their laws to prepare for the GDPR. National legislation that needs to be amended or adopted include setting up national data protection authorities and choosing accreditation bodies. There is also the possibility for Member States to specify requirements in certain areas, such as for the public sector, and public health. The Commission warns that it may make use of the infringement procedure if Member States do not make the necessary changes.
- *Set up the European Data Protection Board (EPDB):* the EPDB will replace the Article 29 Working Party, and further work is needed to make sure it is fully operation by May.
- *Allocate resources to DPAs:* the Commission encourages Member States to allocate sufficient resources to data protection authorities
- *Preparation by businesses, and other organisations.* For certain operators (e.g. those whose core business is data processing), this may include:
 - appointment of data protection officers;
 - conducting data protection impact assessments;
 - notifying data breaches.
 - identify the data they hold –and for what purpose and on what legal basis;
 - assess their contracts and possibilities for international transfers;
- *Awareness raising:* in particular amongst citizens and small businesses so that they understand their rights and obligations. Financial support will be made available for this, and the new online guidance (see below) is also intended to help.

Other points

- *Certification:* the Communication notes that it will look into the issue of certification, based on a study carried out with external experts.
- *Brexit:* the Communication notes that, subject to any transitional arrangement, the rules for transfers of personal data will apply to the United Kingdom after its withdrawal from the European Union.

Commission guidance

In order to assist businesses and individuals, the European Commission has also published guidance online on how to interpret the new rules ([here](#)).

This guidance is presented in an online Q&A format, with examples provided of how the new rules are to be understood in practice. The Commission intends to regularly update the guidance by adding new questions and updating the answers based on the feedback received and issues arising from implementation. It should therefore remain a useful tool in the future.

Analysis thus far carried out of this online guidance suggests that the points should be familiar to those who already have a good knowledge of the GDPR, with some analysts [cautioning](#) that the overly-simplistic representation of certain elements (e.g. by infographics) could give businesses a false sense of security. Businesses are therefore advised to use the services of privacy professionals in order to prepare appropriately.

Resources

[European Commission Communication](#)

[European Commission online guidance](#)

[European Commission information site for small businesses](#)

[European Commission press release, 24 January 2018](#)

[European Commission Q&A, 24 January 2018](#)