

Q. What is the EU General Data Protection Regulation (GDPR)?

A. The EU General Data Protection Regulation (GDPR) (EU Regulation 2016/679) is the new legal framework governing the use of personal data across EU markets. It repeals the existing 1995 EU Data Protection Directive (Directive 95/46/EC) and therefore replaces existing national data protection laws. The full text of the GDPR is available [here](#). It will be applied and enforced across all EU markets from **25 May 2018**. Until then existing data protection law applies.

Q. What exactly is a 'Regulation'? Will it be EU-wide or will there be flexibility at national level?

A. A 'Regulation' is a legal instrument passed at EU level. Unlike a 'Directive', it applies directly and in the same way across all EU countries. It aims to avoid local variation and therefore meet one of the aims of the proposal: a consistent high level of data protection for individuals and a streamlined approach for businesses across EU markets. However, some of the provisions in the Regulation will have flexibility at national level.

Q. How does Brexit affect the GDPR?

A. It is likely that the GDPR will apply directly to the UK from 25 May 2018 as it will probably still be a member of the EU at that time. However, whether it directly applies to the UK in the longer run depends entirely on the type of future trading arrangement the UK has with the EU. For example: if the UK remains a member of the European Economic Area (EEA) then it is likely that the GDPR will apply directly. If the UK is part of the European Free Trade Area (EFTA) then the UK may need to update its national law (i.e. the 1998 Data Protection Act).

However, the territorial scope of the GDPR means that if an organisation is processing personal data about a person who is in the EU then the new law applies regardless of where the business is located. The GDPR is clear that this will apply when (a) an organisation is offering goods or services to individuals in the EU, regardless of whether a payment is used; and (b) when an organisation is monitoring an individuals' behaviour in the EU. **To this extent, the GDPR will apply to the vast majority of digital advertising businesses regardless of Brexit.**

Q. How is the new Regulation likely to affect digital advertising?

A. The new Regulation will have a significant impact on digital advertising: it is likely to transform the way organisations collect, share and use data. The new Regulation builds upon the current data protection legal framework but there are some significant changes for digital advertising. In a nutshell, these are as follows:

Scope – Processing data for digital advertising - whether it directly identifies an individual or not – is now likely to fall within the scope of the new Regulation.

Processing Personal Data – The new Regulation allows for several ways to process personal data (NB processing includes the collection of personal data). This includes ways such as via a contract or for the purpose of complying with legal obligations. It may also be processed with the "unambiguous" consent of the user (NB it remains to be seen how this will work in practice) or when it is in the "legitimate interests" of the organisation processing the personal data (NB

preventing fraud as well as direct marketing are considered legitimate interests but there is no clear definition of direct marketing). Processing “sensitive” (e.g. racial or ethnic origin / sexual orientation) personal data requires the “explicit” of the user.

‘Profiling’ – Individuals will have the right not to be subjected to profiling or the “automatic processing of personal data” where it may cause “legal effects” or similar effects (i.e. refusal of a credit application). In those cases the explicit consent of the user will be required.

‘Pseudonymised’ data – The new Regulation introduces the concept of ‘pseudonymised data’ to incentivize data minimisation and ‘privacy by design’ approaches. Pseudonymisation is a process that personal data can go through, for example encryption, hashing or tokenization techniques, to ensure the data is no longer linked to an identified or identifiable individual.

Fines – Regulators will be able to fine organisations up to €20m or 4% of annual global turnover, whichever is higher, in the event of a breach.

Data Protection Officers (DPO) – All organisations processing personal data that requires “regular and systematic monitoring of data subjects on a large scale” will need to hire a DPO.

Q. Will the new Regulation just apply to organisations operating in Europe?

A. No. The territorial scope of the GDPR means that if an organisation is processing personal data about a person who is in the EU then the new Regulation will apply regardless of where the business is located.

Q. What will the new Regulation mean for the AdChoices programme in Europe?

A. The EU AdChoices [programme](#) – part of a global initiative – offers people in the EU greater transparency and control over behavioural or interest-based advertising. European citizens increasingly [recognise](#) the icon in ads and on sites as a way of finding out more and managing their ad preferences. It therefore has an important role to play and the IAB and other EU trade bodies are currently assessing what role the initiative might play under the new law.

Q. Will the new Regulation replace the ePrivacy Directive (aka the ‘cookie’ law)?

A. No. The UK ‘cookie’ law (and its national counterparts across Europe implementing the Directive) remains in force - see the [IAB’s briefing note](#) for more details. The European Commission has begun reviewing the Directive to ensure it is aligned with the new Regulation. It is unclear if there will be a new law or what the situation in the UK will be once it has left the EU.

Q. What is the IAB going to do to help my organisation meet the obligations in the new Regulation?

A. The IAB will be providing a more detailed member business briefing on the new Regulation. It will also be issuing some guidance to help organisations comply. The IAB will be hosting a series of events for organisations to learn more about the new Regulation and what it means for digital advertising.

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