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Equi Corp Associates
Advocates & Solicitors

GENERAL DATA PROTECTION REGULATIONS & IMPACT ON YOUR BUSINESS

MAY 2018

Our newsletter covers – GDPR & its impact on Companies operating outside EU including from India.

At present, companies' world over are in the process of assessing the impact of EU General Data Protection Regulations ("GDPR") will have on their businesses. High administrative fines in case of non-compliances with GDPR provisions are a driving force behind these concerns as they can lead to loss of business for various countries such as India. GDPR will be applicable from May 25<sup>th</sup>, 2018. GDPR is an omnibus regulation by which the EU intends to strengthen and unify data protection thereby enabling EU citizens to have more control of their personal data.

#### Data Minimisation

Personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which those data is processed.

#### Purpose Limitation

Personal data may only be collected for the specified, explicit and legitimate purposes and must not be further processed in a manner that is incompatible with those purposes.

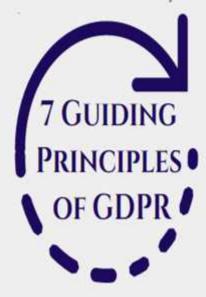
# Lawful, Fair & Transparent

It must be clearly explained to the data subject that data is being captured & what that data is: why that data is being captured, and by whom, and what will happen to that data. It must also be clear what rights the data subject has regarding their own data.

# Acc

#### Accuracy

Personal data must be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay.



W.E.F 25/05/2018



#### Storage Limitation

Personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed: it may be stored for longer periods solely for archiving purposes in the public interest scientific or historical research purposes or statistical purposes.



# Integrity and Confidentiality

Personal data must be processed in a manner that ensures appropriate security of the personal data including protection against unauthorised or unlawful processing and against accidental loss destruction or damage, using appropriate technical or organisational measure.



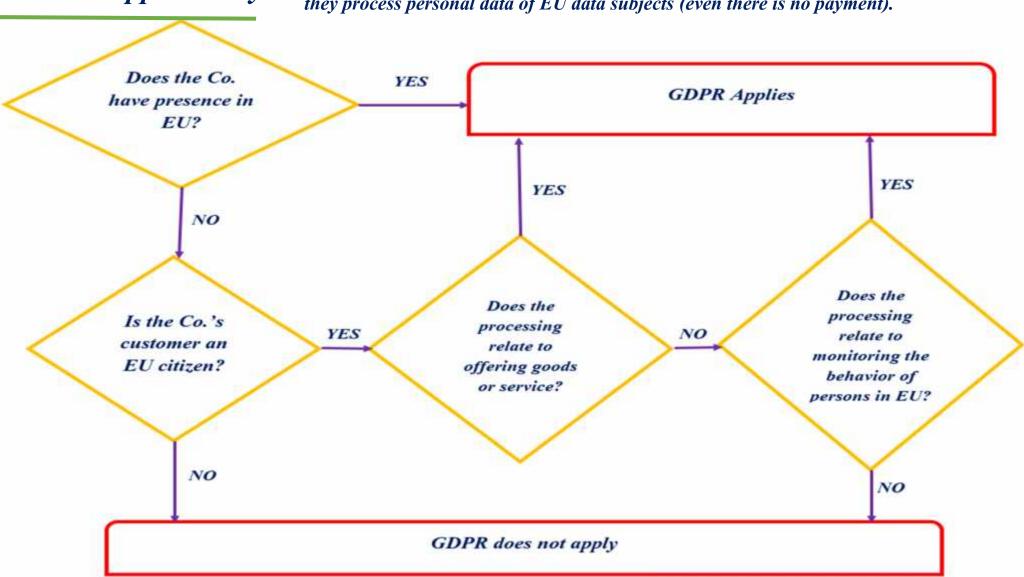
#### Accountability

The controller shall be responsible for, and be able to demonstrate compliance with, the GDPR principles.



# **GDPR** Applicability

GDPR applies globally and companies outside EU will have to comply with the GDPR if they process personal data of EU data subjects (even there is no payment).



Non-EU based organizations: For offering of goods & services (but not monitoring), it must be apparent that the organization "envisages" that activities will be directed to EU data subjects.

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The EU GDPR will increase privacy for individuals and give regulatory authorities greater powers to take action against businesses that breach the new laws. Here's what it means for your business:

Tough penalties:

fines of up to

4% of annual global revenue

€20 million

whichever is greater.



GDPR Highlights

The regulation also applies to non-EU companies that process personal data of individuals in the EU.



The international transfer of data will continue to be governed under EU GDPR rules.

The definition of personal data is now broader and includes identifiers such as



genetic



mental



cultural



economic



social identity.

Obtaining consent for processing personal data must be clear, and must seek an affirmative response.





Data subjects have the right to be forgotten and erased from records.



Parental consent is required for the processing of personal data of children under age 16.

Users may request a copy of personal data in a portable format.

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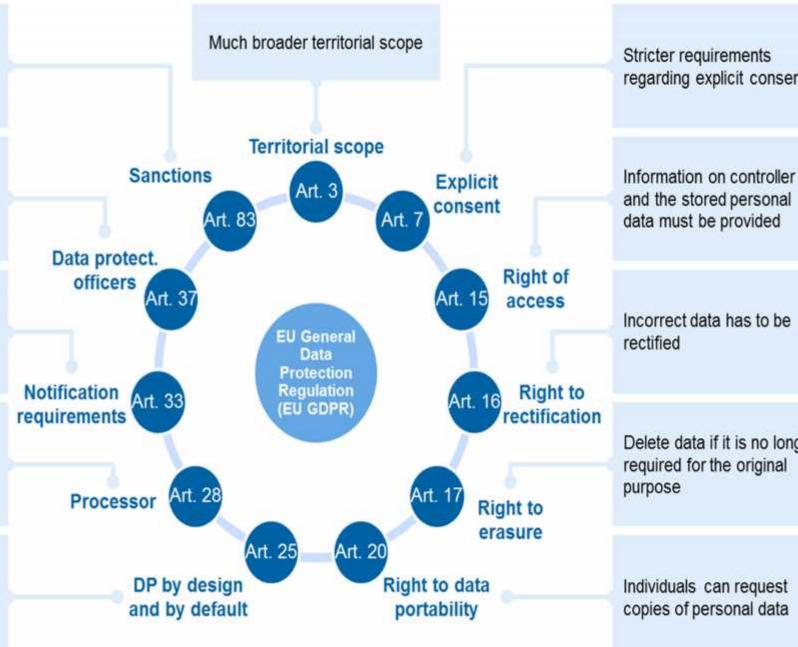


A data protection officer has to be nominated as a fixed role

Data breaches must be reported without undue delay

Processing by third parties must be governed by contract

Develop default privacy protection mechanisms and implement monitoring processes



Stricter requirements regarding explicit consent

and the stored personal data must be provided

Incorrect data has to be rectified

Delete data if it is no longer required for the original purpose

Individuals can request copies of personal data



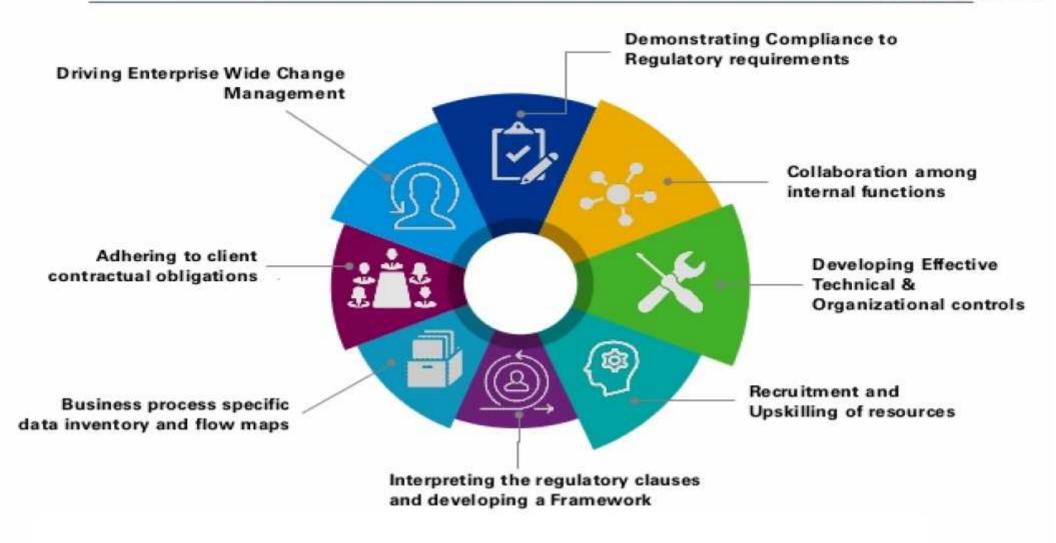
## General Misconceptions about GDPR:

- We are a company established in India hence GDPR does not apply to us;
- #My data is stored with a third party service provider so it's only their responsibility to remain compliant with GDPR;
- **4**Our CISO/CIO/CRO can also play the role of DPO;
- Controllers and processors will have to answer to only a single data protection authority;
- **GDPR** is the Information Security team's problem;
- #My associates have only view access to the personal information of Eu citizens;
- **We are too small an organization so GDPR will not affect us;**
- We are only data processors so we don't have to worry about GDPR





# Problems...





## Overview of key GDPR requirements

#### GOVERNANCE REQUIREMENTS

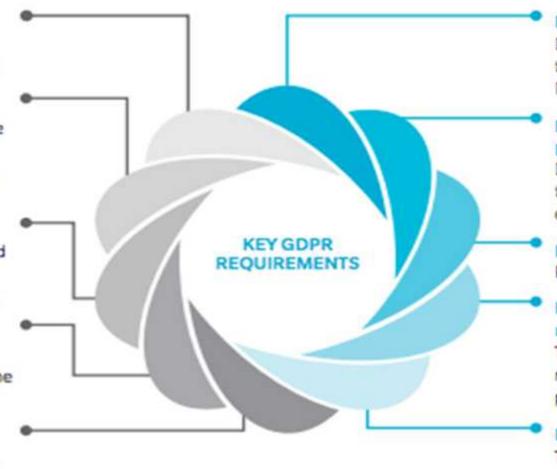
# Mandatory DPO A chief data protection officer must be appointed

Ongoing compliance GDPR compliance must be supported by ongoing processes such as privacy impact assessments

#### Breach reporting Breaches must be reported to the relevant authority within defined timeframes

Consistent purpose Purpose given when collecting PII must be in line with its subsequent use

Unambiguous consent Use of PII will be based on obtaining and evidencing unambiguous consent from the data subject



#### TECHNICAL REQUIREMENTS

#### Data must be portable

Data subjects have the right to request transfer of their PII to other firms

#### Data must be permanently erased

Data subjects have the right to request permanent erasure of PII

#### Data must be secured

PII is to be stored securely

#### Data lineage must be retained

The source of PII must be retained throughout its processing

#### Data must be accurate

The accuracy of PII must be actively managed to a high standard

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## IMPACT ON BUSINESS

#### Consent

Secure consent to process the data: in the instance of children and social media. checking the age limit for parental consent.

#### Transferring Data outside EU

Making legal arrangement for any data being transferred to non-EU countries.

#### Marketing

This applies to most companies operating in today's business world. With GDPR there must be an option to easily opt out of this marketing at all times.

#### Profiling

If you are profiling someone's information for example for a loan application, financial institutions must now ensure the final decision is always made by a person and not a machine and the applicant has the option to contest the decision.

#### Communication

Using plain language, explain who you are when requesting personal data and why you are processing this data, how long you will store it for, and who will have access to it.

The Ways GDPR Can

Affect Your Business

## Safeguard Sensitive Data

Ensure an EU citizen's data around their health, race, religion, sexual orientation and political beliefs is safeguarded at all times. This would apply to doctors and medical professionals.

#### Warnings

Informing people of data breaches or issues.

#### Access and Portability

Let people view all the data you have on them and allow people to transfer this data from one provider to another.

#### Erase Data

This gives citizens the "right to be forgotten" i.e the right to request that a company erases the personal data it is storing about them, for example the comments people make on social media in their youth are not always content they want their future employers to see.



## **Know Your (Customers') Rights: 8 Ways GDPR Expands EU Citizens' Privacy Rights**



#### The Right to Be Informed

Individuals have a right to know who is processing their personal data



#### The Right to Access

Individuals have the right to access any personal data that has been collected about them.



#### The Right to Rectifications

Individuals have the right to require organizations to correct inaccurate personal data



#### The Right to Be Forgotten

Individuals have the right to have their personal data deleted and to prevent further collection



#### The Right to Restrict Processing

Individuals have the right to require organizations to restrict the processing of specific categories of personal data



#### The Right to Data Portability

Individuals have the right to require organizations to transfer personal data to a recipient of their choice



#### The Right to Object

Individuals have the right to consent, or withdraw consent, to the processing of their personal data



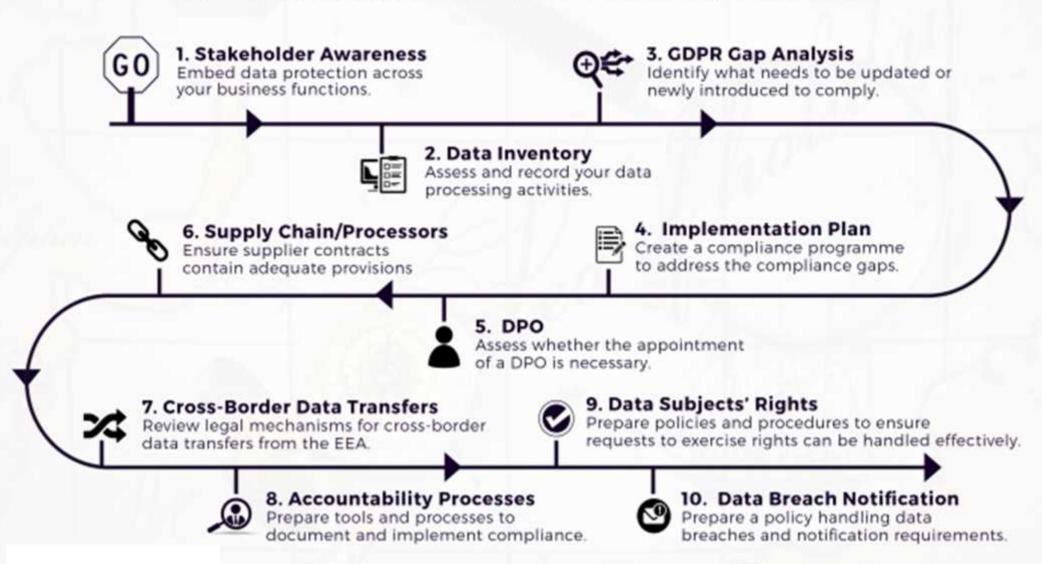
#### Rights in Relation to Automated Decision Making and Profiling

Individuals have the right to opt out of the use of their personal data by automated systems, such as artificial intelligence

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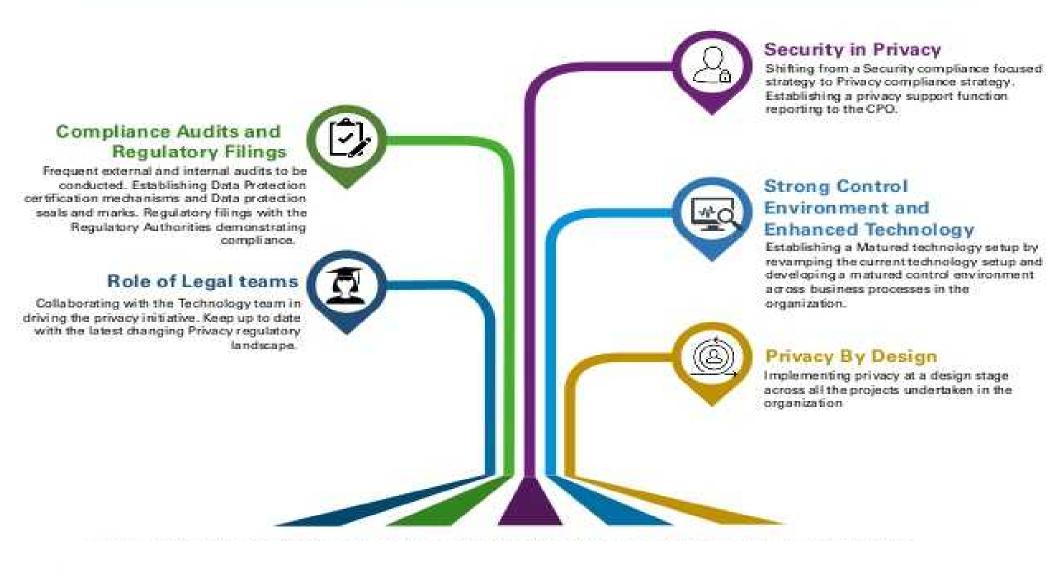








# Roadmap after May 2018



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