



CULLEN

INTERNATIONAL

The EU General Data Protection Regulation – A quick overview

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General Data Protection Regulation (GDPR)

- GDPR supersedes 1995 Directive on data protection
- Entry into force: May 25, 2018



General Data Protection Regulation

Purpose

Rules relating to the protection of **natural persons** with regard to:

1. the **processing of personal data** and
2. the rules relating to the **free movement of personal data**.

General Data Protection Regulation

Personal data

Any information relating to an identified or identifiable natural person.



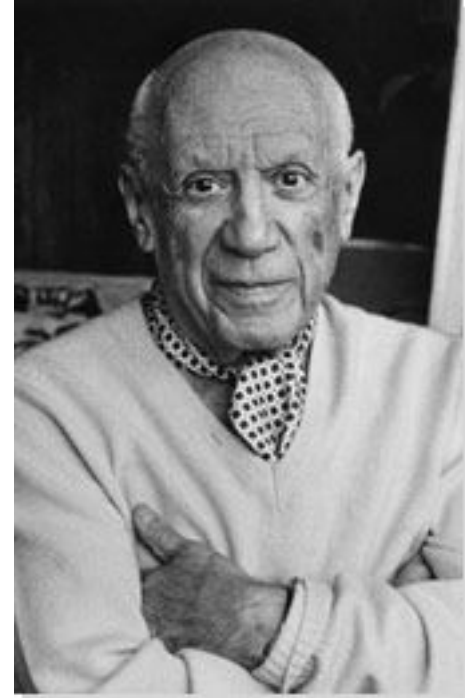
personal
data

The graphic shows the words 'personal data' in a large, white, sans-serif font, centered on a dark blue background. The background is filled with a dense pattern of small, light blue binary code (0s and 1s) and hexadecimal characters (A-F, 0-9), creating a digital or data-centric aesthetic.

GDPR

Personal data

- Spanish
- Painter
- (1881-1973)
- Co-founder of the cubist movement
- Spent most of his adult life in France
- Pablo
- Picasso



General Data Protection Regulation

Key changes

Extended
territorial
scope

Strengthened
consent
requirement

Reinforced
obligations
for controllers

Reinforced
rights for the
data subject

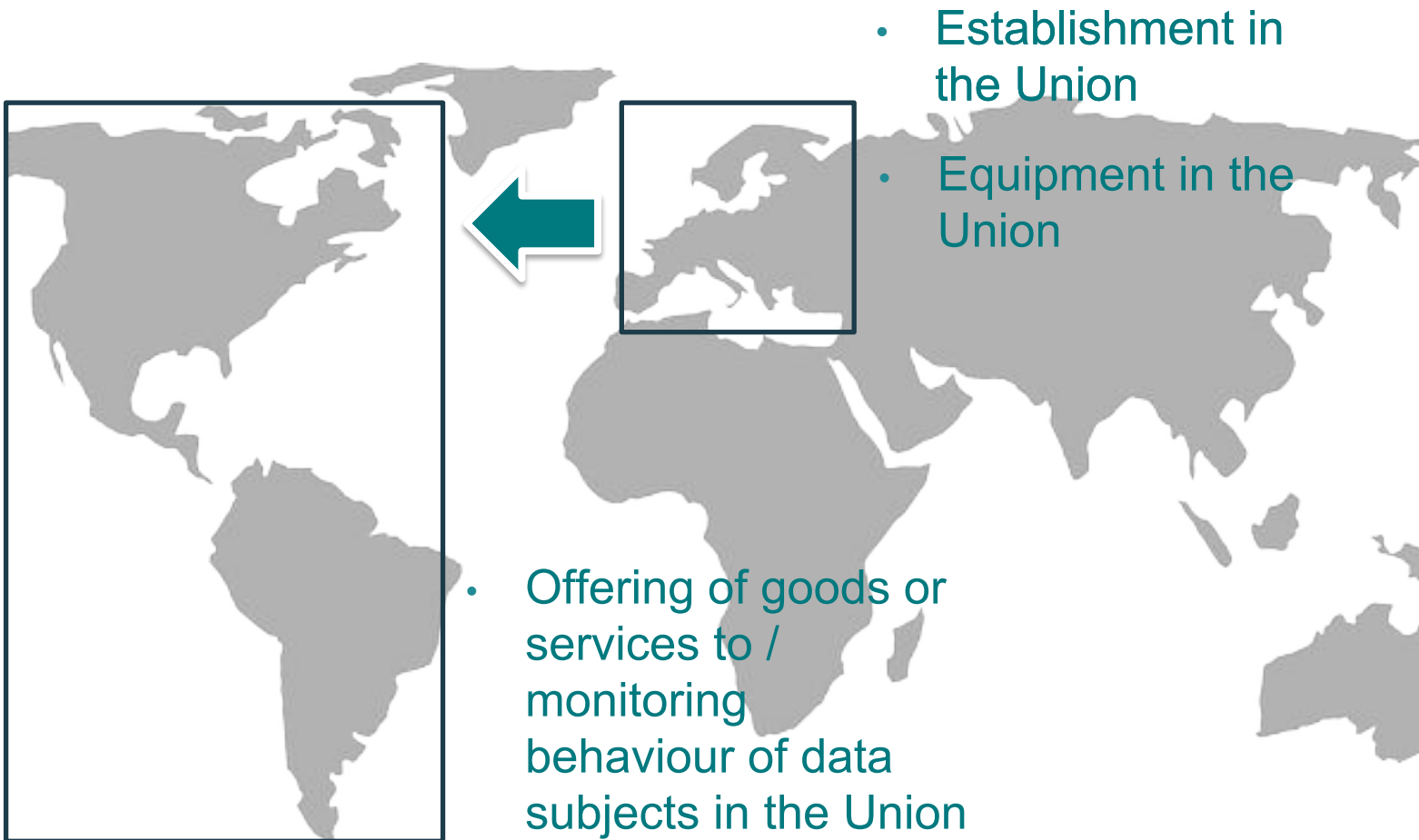
Notification of
data
breaches

Increased
penalties

Terrestrial scope

General Data Protection Regulation

Extended territorial scope



General Data Protection Regulation

Extended territorial scope

GDPR applies to companies not established in the EU that:

1. offer goods or services to individuals in the EU;
or,
2. monitor their behaviour.

General Data Protection Regulation

Extended territorial scope

In practice

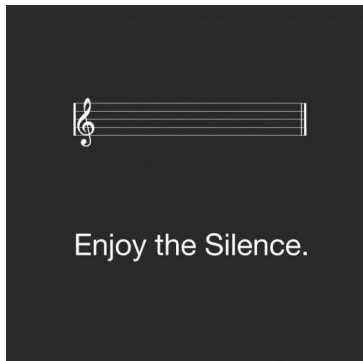
Companies not established in the EU but subject to the GDPR have to designate **a representative in the EU**, unless they process personal data **occasionally and without a risk for individuals.**

Strengthened consent

General Data Protection Regulation

Strengthened consent requirement

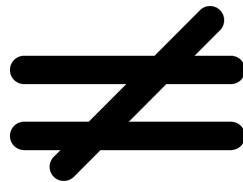
Silence, pre-ticked boxes or inactivity should not constitute consent.



or



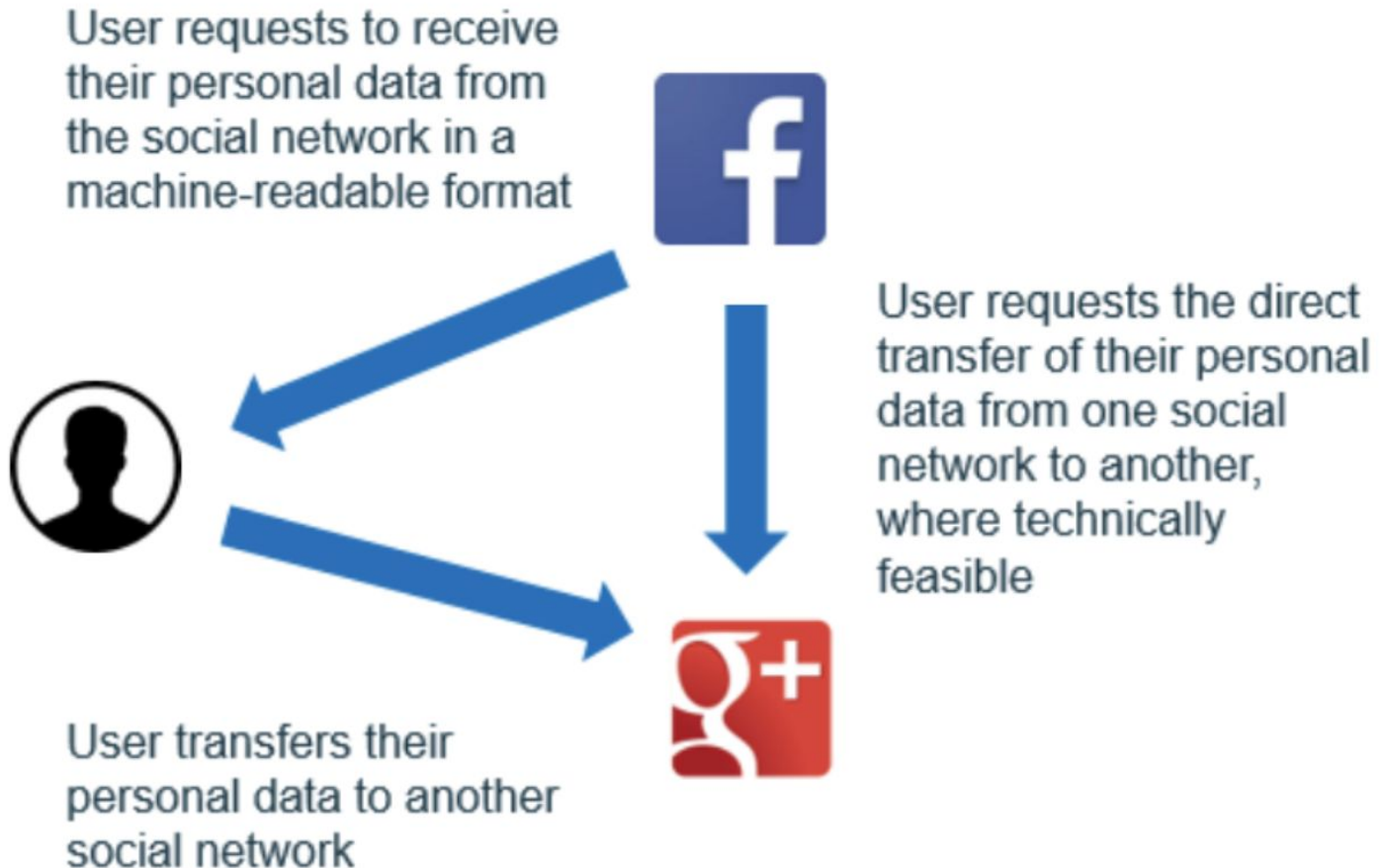
or



Data portability

General Data Protection Regulation

Right to data portability of a social network user



Algorithmic transparency

Automated individual decision-making, including profiling

GDPR - Article 22

- The data subject shall have **the right not to be subject to a decision based solely on automated processing**, including **profiling**, which produces legal effects concerning him or her or similarly significantly affects him or her.
- GDPR foresees common-sense exceptions
- Art 29 WP adopted [guidelines](#) on Feb 6, 2018

Automated individual decision-making, including profiling

GDPR - Article 22

Safeguards

The data controller must ensure individuals' right to:

- **obtain human intervention;**
- **express their opinion; and**
- **contest the decision.**



Automated individual decision-making, including profiling

GDPR - Article 22

Under the GDPR, controllers must also perform a **data protection impact assessment (DPIA)** before using automated decision-making processes.



Notification of breaches

Notification of data breaches

GDPR – Article 33

All companies processing personal data have to **report** (severe) **personal data breaches** to DPA and, in some cases, to affected individuals..

Appointment of Data Protection Officer

Data Protection Officer

GDPR - Article 39



Data processors must designate a data protection officer when:

- the processing is carried out by a **public body**;
- their core activities “*consist of processing operations which (...) require **regular and systematic monitoring** of data subjects on a **large scale**”*; or
- their core activities “*consist of processing on a **large scale**” of **sensitive** personal data.*

Data Protection Officer

GDPR- Article 39



DPO's duties:

- **Informing/advising** the controller or processor
- monitoring **compliance** with GDPR;
- **cooperating** with **supervisory authority**.

Fines/Remedies

Penalties and remedies

GDPR - Article 84

Penalties for controllers and processors

- up to 4% of the worldwide turnover
- **Remedies for data subjects**
 - Right to effective judicial redress
 - Right to lodge a complaint with a supervisory authority
 - Right to receive compensation from the controller or processor
 - **Right to mandate a not-for-profit body, organisation or association to exercise such rights**



THANK YOU!

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EU-US Safe Harbour / Privacy Shield

International data transfers

Adequacy
Decision

Standard
contractual
clauses

Binding
corporate
rules

Derogations
for specific
situations

EU-US Safe Harbour / Privacy Shield Invalidation & renegotiation

- **October 2015: CJEU invalidates Safe Harbour**
 - Background (EU Charter, Snowden revelations, Facebook)
 - Interference with data protection authorised, “*on a generalised basis*”, storage of all the personal data transferred from the EU to the US “*without any differentiation, limitation or exception being made*”
- **July 2016: EU-US Privacy shield**
 - Self-certification
 - Strengthened obligations for companies
 - US Commitments - “*Written assurances*”
 - Redress mechanisms:
 - ombudsperson in US department of State
 - companies “persistently” failing to comply are removed from the Privacy Shield list and must return or delete the personal data received” under the framework
- **November 2016: challenged before CJEU by Digital Rights Ireland**



HUMAN RIGHTS

Privacy and Data Protection

EU Charter of Fundamental Rights

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

