

The Impacts and Influences of GDPR

One year on: Q&A

What advice would you give a firm that is currently in transition of changing IT system and Head office requires access to current systems to do so. Head office is based in country outside the EU. Will standard clauses be enough?

In essence Standard Contract Contractual clauses should suffice, however, and unfortunately there is nearly always a however...

- What exactly is the business justification (legal basis of processing) for accessing the data?
- It is assumed from the question that until now Head Office personnel have NOT had access to the data? (art 30 records of data processing activities)
- Do the Head office personnel (the question does not identified the functions / roles involved) actually require access to the data? The type and volume of data is not specified.
- If the transition to new IT systems is part of a business evolution with new technologies, which have been (are being) provided by a new third party:
 - o How does this impact the individual data subjects' rights?
 - o If introducing new technologies, including third countries, a Data Protection Impact Assessment is likely to be required (if not already completed)
 - o Would data subjects reasonably expect that Head Office personnel to have access to some or all of this data?
- You would presumably need to update your Privacy Notice to reflect changes in the processing activities. If claiming under 'Legitimate Interests' to articulate the basis for this, explaining what data is being processed, the rationale for doing so and the security measures and safeguards being employed.

NB – on the basis of the question posed, 'consent' is unlikely to be an appropriate legal basis for processing. There could be adverse operational impacts should individuals decline to consent, and because the processing is necessary to support business activities it is unlikely that any request for 'consent' would be 'free and fair'.

Is there any mapping for differences between national implementations?

You can purchase solutions such as [Nymity](#) which claims to be the world's most powerful multi-jurisdictional privacy law comparison solution – from what I have seen this is a very reasonable claim. However, this is a product / service that you buy-into.

Other comparisons are offered (Free) by:

- [Thomson Reuters](#): This covers in-depth comparisons for Australia, Canada, China, US, UK and EU law. There is also a section for global cross-border activities. There are some very good resources and legal examples / materials – it is aimed at / for lawyers so the language and approach is not business friendly.
- [DLP Piper](#) This does not go into the details and specifics that you may require for business purposes.

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There are various other online tools and offerings that can be found online.

There are also various publications, however they are quickly outdated, and will not reflect revised advice following legal challenges or interpretations of the Regulation from the European Court of Justice (ECJ) or other Supervisory Authorities.

Will there be any impact on the ePrivacy Regulation following Brexit?

It is possible that the EU may not be in a position to adopt the new ePrivacy Regulation before the second or third quarter of 2020.

It is also possible that the newly elected European Parliament will decide not to continue negotiations on the proposed (Draft) Regulation and consequently it could cease. A raft of amendments (88 page compromise proposal) to the draft Regulation were tabled only last week. It is anticipated that some decision as to the future direction of the Regulation will be forthcoming in early October. We watch and wait the outcome.

If / when the Regulation is adopted, it will come into force after a few days. NB: the 'in-force date' is different from the date from which it 'applies' in law. It is only from the date of application that the Regulation becomes enforceable in law. The recent draft text stated that the Regulation will 'apply' two years after coming into force.

However, If the UK exits with a deal which includes the Withdrawal Agreement, we will align with EU Laws and Regulations during the transition period (12 or 24 months?) during which there will be discussions as to our future adoption or not, and what happens thereafter.

If the UK exits the EU without a deal the Regulation will not apply to the UK. In the terms of the Withdrawal Agreement the UK would closely align with the EU on Data Protection (GDPR) and the ePrivacy Regulation.

There is a potential that the UK may produce something similar (but different from the EU) which could make it more complicated to reach an agreement with them for data transfers etc. which could have a (further) detrimental impact to cross-border trade/movement and use of data.

The UK's position has been to ensure that the proposed Regulation protects the confidentiality of electronic communications while still encouraging digital innovation. Historically the e-Privacy Directive has informed the UK's Privacy and Electronic Communications Regulations (PECR) – so the UK must revise these materials sooner rather than later! Again, watch this space....

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Have there been any class action lawsuits against BA in addition to the Jumbo fine you mentioned?

An interesting question.

Indeed I believe the vultures are circling and that a case is being prepared.

I have heard rumours and even seen some material indicating that the damages being sought are eye watering and make the 183 Million fine look like a drop in the ocean. (A fleet of aircraft perhaps as opposed to a single jumbo).

But, if you are an impacted BA customer thinking you are in line to receive a massive pay out, may I offer a note of caution...

Read the Terms and Conditions before you provide any further details and sign-up to this bonanza.

These companies and lawyers are going to be very expensive, and the case will likely take a long time. They, the lawyers, will need to cover their costs.

Claimants will be required to commit to paying a 'percentage' of that fee, based on the number of claimants and the final sum agreed to be paid.

You are not likely to see any money for a long time, perhaps years. As there will likely be appeals, which will be paid for from your 'cut' or from your pocket.

People have already experienced something similar with the emissions scandal.

Remember the adage "if it sounds too good to be true it probably is".

Apologies if I sound a bit cynical but ...

IRM would like to thank you once again for your interest and co-operation with our webinar on the Impacts and Influences of GDPR – one year on. Don't forget, you can download IRM's [ISO 27701:2019](#) brochure on our website.

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