

TEN KEY IMPLICATIONS OF THE GDPR FOR BETTING & GAMING INDUSTRY

WHAT IS GDPR?

The General Data Protection Regulation (GDPR) (EU Regulation no. 2016 / 679) is the document jointly adopted in April 2016 by the European Parliament, the Council of the European Union and the European Commission, with the main purpose of unifying the data processing and protection policy of all individuals within the EU, and encompassing the **export of personal data outside the EU**. The Regulation is expected to **enter into force on May 25th, 2018**.

WHY WAS IT ADOPTED?

The essence of GDPR is **giving back the control to EU citizens and residents** over their personal data in an effective way, simplifying the regulatory environment for international business and unifying the existing regulation within the Union. The main projected outcomes of this strategic document are both **harmonization** of current diverse national legislation standards relating to data protection and further **enhancement** of the fundamental human rights in one of their most sensitive aspects – **personal data**. In view of this significant regulatory change, there are still number of uncertainties to be addressed to.

WHAT IS PERSONAL DATA?

Personal data refer to any data relating to a living individual (**data subject**) like first / last name, gender, place and date of birth, biometric, political, cultural, economic etc. feature or attitude. Any entity which determines the purpose for which and the manner in which such personal data is collected and processed is known as **data processor**. Each data subject will be entitled with the **right to be informed** on the scope and types of his / her personal data currently held, where the data came from and who they are shared with.

The Betting and Gaming industry, characterized by substantial **digital presence**, has only few months at disposal to familiarize and comply with new regulatory framework, particularly in the part referring to revised data processing and privacy keeping policies. There are ten key focus points crucial for that process, because **GDPR is about to achieve massive impact** on all European licensed online gambling operators.

1. BROADENED TERRITORIAL SCOPE

Except to natural persons and legal entities within EU, the GDPR will be also applying to non-EU legal entities, if they meet a single condition - offering goods and services or monitoring digital behaviour of data subjects **incorporated in the EU, regardless** of whether that processing takes place **within or outside of EU**. Therefore, the GDPR, besides the location of the processing, takes into consideration the location of **the individual whose data is being processed**, which means the complete Industry is about to be affected by the GDPR provisions.

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2. DATA MINIMISATION

Companies are to be met with the imperatives of both **minimising the data they collect** and of in-depth checking on **what data types are processed and collected**. The meaning of term 'relevant personal data' is to be widened – it will include data such as IP address, cookie identifiers and device IDs. Therefore, the companies will need a **rationale for initiating such data processing**. Each business must ensure this principle of minimised data procession is to be implemented by introducing due **technical, procedural and organizational standards**, with IT architecture and risk mechanisms as a priority. In practice, the controller must implement mechanisms for ensuring that, by default, only those personal data are processed which are necessary for each specific purpose of the processing.

3. EXPLICIT CONSENT AND COMPREHENSIBLE TERMS & CONDITIONS

Starting from May 2018, the companies will be no longer permitted to point out unclear, ambiguous, and unnecessarily extensive Terms and Conditions. **Such T&C will need to be compiled using a simple, understandable language** from which it will be easy to determine the exact scope of data the client is approving upon opening / managing their account. Equally flexible and easily understandable rules must be applicable upon withdrawing the client's consent to be the subject of the company's further data processing. This particularly applies to explicit consent to be required for **profiling activities** or cross-border data transfers relating to players, as the massive potential for metadata processing misapplications, in the field of **behavioural data (sensitive personal data)**, needs to be put under the stricter control.

4. SECURITY BREACH NOTIFICATION

The GDPR introduces a **mandatory notification mechanism** in the event of a personal data breach. Data Controllers will be required to report personal data breaches to their supervisory authority **no later than 72 hours** after becoming aware of the breach. There will be space left to the companies to consider whether they will need to compile additional rules of procedure and plans on how they will identify security breaches, in order to be able to report them in the prescribed time limit. One of the key requirements for companies is **to notify the victim of the data breach**. An internal breach register must be kept and data breach procedures should be implemented and regularly reviewed.

5. THE RIGHT TO BE FORGOTTEN (THE RIGHT TO ERASURE)

Individuals (data subjects) will be gaining additional rights: not just the right to access, but also the right to obtain from the controller the erasure of personal data concerning him or her, and without undue delay. Such action can be taken **when the data in question is no longer in relation to the original purpose of processing, when the data subject withdraws their consent for processing, or there are no further legitimate grounds for such processing to take place**. It is worth mentioning that the GDPR transfers the responsibility to the companies, and not to the customers, to prove the data in question cannot be erased if deemed as still needed and relevant.

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6. DATA PROTECTION OFFICERS (DPOs)

In general, it remains to be seen whether the companies active in our industry will be exempt from the obligation to appoint a data protection officer, given the data processing activities is not their core business activity. The gambling industry **does not primarily centre around electronic communication as such**. It only uses digital environment as a framework for providing with improved quality of services and customer experience, and to strengthen the “security of the game and of the player” approach, by preventing suspicious betting patterns and match fixing.

7. ONE-STOP SHOPS

Instead of the existing data security regime, in which the companies processing data in the EU must manage 28 separate national regulatory frameworks, the GDPR will establish a **single, EU-wide regulatory authority**. In “one-stop-shop” mechanism, data subjects will have access rights to pursue legal remedies in cases of substantial transnational data breaches which will facilitate the overall GDPR implementation.

8. SUPERVISORY AUTHORITIES (SAs)

One or more supervisory authorities (SAs) in each member state will be in charge of monitoring the application of this regulation, and they will also be **required to cooperate with each other**. Substantial adaptation will be needed in cases where companies operate from different member states and do not necessarily share their data processing obligations.

9. SIGNIFICANTLY HIGHER PENALTIES

Companies breaching the provisions of GDPR can be fined up to **4% of the annual turnover, or up to 20 million euros**, if they are proven the processing of personal data without the explicit consent of the client. The 2% annual turnover rate will apply to “minor” breaches such as inadequately regulated customer data registry.

10. CORPORATE INCENTIVES TO FULL – SCALE COMPLIANCE

Although faced with massive challenge, the operators need to increase awareness regarding GDPR, given its undisputed commercial impact - increasing the customers’ awareness of a provider which protects and lawfully processes his/her personal data will result in **fostering the customers’ trust and loyalty**. It is worth noting that **complying with the GDPR means stimulating innovation** without sacrificing revenue targets.