

USDA Foreign Agricultural Service

GAIN Report

Global Agricultural Information Network

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POLICY

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New data protection rules enter into force in the EU

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Trade Policy Monitoring

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Report Highlights:

On May 25, 2018, the new General Data Protection Regulation (GDPR) will enter into force in the European Union. This introduces new data protection requirements for controllers and processors of personal data of EU residents, and sets sanctions and heavy fines in case of non-compliance.

General Information:

As of 25 May 2018, [the General Data Protection Regulation](#) (GDPR) applies in the EU. The GDPR is a horizontal privacy legislation that applies across sector and to companies of all sizes. It replaces the previous data protection Directive 1995/46 with the overall objectives of the legislation remaining the same but introducing numerous new requirements. Given the complexity of this legislation, we encourage companies to consult with a legal adviser specialized in European data privacy legislation to assess its relevance and potential compliance issues.

Scope of the GDPR:

The GDPR applies to the processing of personal data, which is defined very broadly under EU law. “Personal data” is any information relating to an identified or identifiable natural person, “such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”.

All U.S. businesses doing business in Europe, seeking to sell to EU persons, or that have clients or employees in Europe should be aware of GDPR and assess what obligations they may have under the GDPR. A U.S. organization that is not established in the Union may have to comply with the Regulation when processing personal data of European residents:

- If the company offers goods or services to European data subjects in the EU; or,
- If the company is monitoring EU data subjects’ behavior; or,
- If the company processes personal data of EU individuals on behalf of other businesses.

GDPR requirements:

The GDPR introduces new requirements with a potentially significant impact on the interests of U.S. companies, which include:

- **Clear language:** Privacy policies will have to be written in a clear straightforward language.
- **Consent from user:** The user will need to give an affirmative consent before his/her data can be used by a business. Silence is no longer consent.
- **Transparency:**
 - Businesses will need to inform the user about transfers of data outside the EU.
 - They will have to inform the user about new purposes for processing data.
 - If algorithms are used, businesses will have to inform the user as well.
- **New rights:**
 - Businesses will have to inform users immediately in case of harmful data breach.
 - Users will have the right to access and get a copy of their data that a business has on them.
 - Users will have a clearly defined “right to be forgotten” (right to erasure).

Non-compliance:

In case of non-compliance, there are two tiers of maximum fines under the GDPR. The higher fine threshold is 4% of an undertaking's worldwide annual turnover or 20 million euros, whichever is higher. The lower threshold fine is 2% of an undertaking's worldwide annual turnover or 10 million euros, whichever is higher. Higher fines apply for instance in case of violation of the basic principles for processing data, including consent; data transfer provisions. Lower fines apply for non-compliance with notification of a personal data breach or the obligation to designate a data protection officer among others.

Useful links:

[U.S. Department of Commerce Guidance](#)

[European Commission Infographic](#)

[European Commission Factsheets on GDPR](#)

To the best of our knowledge, the information contained in this report is accurate as of the date published. However, the FAS does not take responsibility for actions readers may take based on the information contained herein. Readers should always conduct their own due diligence before entering into business ventures or other commercial arrangements.