

Short Communication

European Union's General Data Protection Regulation, 2018: A brief overview

Anup Kumar Das

Centre for Studies in Science Policy, School of Social Sciences
Jawaharlal Nehru University, New Delhi - 110067, India,
Email: anup_csp@mail.jnu.ac.in

This short communication introduces the General Data Protection Regulation (GDPR) that came into force on 25th May 2018 across Europe. This Regulation will also have a far-reaching impact on libraries, archives and research institutions in Europe and their global collaborators. The paper also describes how IFLA and its member libraries are dealing with GDPR and data privacy issues.

Introduction

The European Union's General Data Protection Regulation¹ (GDPR) came into force on 25th May 2018 across the European region. GDPR was passed in the European Parliament and the European Council on 27 April 2016 as a Regulation on “the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data” (no. 2016/679). It came into force after two years in order to ensure its preparedness and smooth transition to a more secured data privacy regime. GDPR provisions became directly applicable in all EU and EEA (European Economic Area) member states after the entire member countries agreed to follow the Regulation.

The GDPR is widely discussed by the business communities, including the business entities engaged in the online information services, e-commerce, and digital marketplace. The personal data is very frequently used by an individual consumer or a clientele to avail many of these online as well as offline services to be delivered at her/his doorstep. While giving informed consent, a natural person or data subject shares his/her personal data for different purposes, including availing desired products services from service providers.

The texts of GDPR is well structured and divided into eleven chapters, namely, (I) General Provisions,

(II) Principles, (III) Rights of the Data Subject, (IV) Controller and Processor, (V) Transfers of Personal Data to Third Countries or International Organisations, (VI) Independent Supervisory Authorities, (VII) Cooperation and Consistency, (VIII) Remedies, Liability and Penalties, (IX) Provisions Relating to Specific Processing Situations, (X) Delegated Acts and Implementing Acts, and (XI) Final Provisions. The Regulation also contains 99 Articles to deal with the specific matters in terms of governance and implementation framework.

The GDPR identifies a set of different distinct actors in the GDPR framework while the data subject (i.e., a natural person) remains at the centre-stage. Other actors include the data controller, data processor, data protection officer, and supervisory authority. To define further, Data Controller refers to a person who decides the purpose and how the personal data is used. Data Processor is a person who carries out the work on behalf of, or under instruction from the data controller. Data protection officer refers to a nodal authority in an organization who interfaces between the employees carrying out data processing work and the data controller/ processor. Supervisory Authority is the governmental body in charge of regulating data protection law, e.g., Information Commissioner's Office.

A data subject also enjoys certain legal rights, such as the right to the protection of personal data concerning him or her, the right of access by the data subject (Article 15), the right to rectification (Article 16), the right to erasure (or right to be forgotten) (Article 17), the right to restriction of processing (Article 18), the right to data portability (from on data controller to another), the right to object decisions based on profiling, the right not to be subject of automated decision making, the right to withdraw his or her consent at any time, and the right to lodge a complaint with a single supervisory authority. The Regulation strongly advocates the data minimization, not only in terms of a collection but also concerning data storage and long-term retention.

GDPR also ensures the 'Privacy by Design' in every information system storing personal data of European data subjects. An information processor needs to ensure tightened obligations, such as providing data privacy principles (individuals' consents, transparency, notices), undertaking privacy impact assessment, breach notification, an internal record of processing, accountability, and profiling rules.

The Chapter V of the GDPR elaborates detailed structure for the cross-border data transfer while doing business with the European data subjects (i.e., individuals), organizations and institutions. Trans-border data transfer would have a different level of screenings and certification. For example, a business process outsourcing (BPO) company located in a non-European country would be able to continue to do business with European enterprises, if the data subjects are satisfied with the establishment of certification mechanisms and data protection seals for the safeguarding of personal data. Their informed consent for the processing of personal data to a third country's entity will also be required.

GDPR also has provided a wider definition of personal data vis-à-vis sensitive data. A particularly sensitive data relates to a living person, for examples, religious or philosophical belief, political views, sexual orientation, trade union activities, past record of criminal or unsocial behaviour, medical or health-related record, and race or ethnicity related data. GDPR also cares about anonymous data and data pseudonymization. It ensures that processing of data of children requires parental consent.

IFLA's Effort in Sensitization of GDPR

Meanwhile IFLA², an international organization headquartered in Europe, recently issued a briefing guidance for its member libraries and institutions. This describes a set of actions for all libraries, which include maintaining written records outlining the purpose for using personal data, the categories of personal data stored, time limits for deleting personal data, technical and organizational measures to protect personal data, etc. Libraries also need to ensure

obtaining formal consent from data subjects for storing personal data, and upon request, such information must be supplied to the appropriate data protection authorities. In this briefing, IFLA also identifies that there are specific exemptions from the data protection law to hold news and broadcast contents in the libraries and archives, for ensuring the freedom of expression and information. Thus, a library or an archive, as a holder of records of public interest, may ensure its legal obligation "to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest." Similarly, the GDPR also provides non-mandatory exemptions for scientific or historical research purposes, as well as processing personal data for statistical research purposes. However, these provisions need to be checked with the national government of the respective country. IFLA³ also organized a webinar on 24th April 2018 for their members in Europe, titled "General Data Protection Regulation: What Do the New European Union Rules Mean for Libraries?"

The international community of librarians and information professionals would also be interested to know the implications and legacy of GDPR in their respective country. They must also ensure data privacy of their own clientele and other stakeholders for establishing a better societal norm.

References

1. European Union, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46, *Official Journal of the European Union*, 59 (2016) 1-88. Available on <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679> (Accessed on 26 May 2018).
2. IFLA, Briefing: Impact of the General Data Protection Regulation 2018. Available at www.ifla.org/files/assets/clm/publications/briefing_general_data_protection_regulation_2018.pdf (Accessed on 26 May 2018).
3. IFLA, General Data Protection Regulation: What Do the New EU Rules Mean for Libraries? Webinar Recordings. Available at <http://www.ifla.org/node/36104> (Accessed on 26 May 2018).