

# Credocast

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## GDPR TO THE RESCUE

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## About Credo Advisory

Credo Advisory is a strategic communications firm that specializes in designing and implementing strategic, operational and tactical communications initiatives. We provide a full suite of communications services to our clients, which include public communications and advocacy, government relations, media relations, crisis communications, digital communications, and capacity building.

Our mission is to develop bespoke communications products, activities and campaigns built on knowledge, research and industry insights. With our ability to communicate effectively with diverse audiences and stakeholder groups, Credo's mission is to provide impactful strategic communications advisory from inception to implementation. At Credo, we committed to improving the way societies communicate.

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“ It is the most important change in data privacy regulation in 20 years.<sup>5</sup> ”

“We believe that one of the most immediate risks for Nigerian companies especially business-to-business companies providing services to EU data subjects is that from May 25, 2018, part of the requirements for entering contracts is the requirement to be GDPR compliant.”

**LegitNG Quick Guide to GDPR Compliance**

## What’s all the fuss?

The General Data Protection Regulation (GDPR) was effected on May 25, 2018 but has been received with a significantly lower response rate on the part of Nigerian businesses and organisations compared to their international counterparts. Before the regulation officially took effect, international organisations like Facebook, WhatsApp, Google, LinkedIn, Twitter, Snapchat, Instagram, and Amazon had already announced changes to their privacy policy in consonance with the new guidelines. However, over 90 percent of Nigerian-based companies (due to lack of time and resources) are yet to respond to the development even as their business transactions may be exposed to the regulation.<sup>1</sup> A likely explanation could be a widespread perception of the regulation as an EU “thing,” resulting in uncertainties as to whether the scope of the regulation extends to Nigerian organizations and by extension, other establishments outside of the EU region.

One thing is certain, dire consequences lurk for GDPR defaulters and this leaves Nigerian establishments with one vital question to answer - are you ready?



## Where it all started

**F for Facebook - Cambridge Analytica data scandal**

<sup>1</sup> Frank, E (2018) EU GDPR: Why Nigerian companies are not rushing to update privacy. Available at: <http://www.businessdayonline.com/morecompanies/technology/article/eu-gdpr-nigerian-companies-not-rushing-update-privacy/>

<sup>2</sup> Alvin C. (2018) The Facebook and Cambridge Analytica scandal, explained with a simple diagram. Available at: <https://www.vox.com/policy-and-politics/2018/3/23/17151916/facebook-cambridge-analytica-trump-diagram>

<sup>3</sup> Aja R. (2018) The Facebook data breach wasn't a hack. It was a wake-up call. Available at: <https://www.vox.com/2018/3/20/17138756/facebook-data-breach-cambridge-analytica-explained>

<sup>4</sup> Jon M. (2018) What Is the GDPR? The EU's Online Privacy Law: Explained. Available at: <https://www.digitaltrends.com/computing/what-is-the-gdpr/>

<sup>5</sup>EU GDPR Information Portal Retrieved from: <https://www.eugdpr.org/>

Cambridge Analytica, a political consulting firm that worked for the Trump campaign 2016 presidential election, harvested raw data of up to 87 million Facebook users. It used this data to specifically tailor campaign messaging to individual preference, consequently influencing a victory for Donald Trump.<sup>2</sup>

On the other hand, social networking giant, Facebook was an accessory to this data exposure due to a loophole in their Application Programming Interface (API).<sup>3</sup> Through this, Russian-American Cambridge University researcher, Aleksandr Kogan (who worked with Cambridge Analytica) accessed the personal data of millions of unsuspecting Facebook users by

using a personality quiz, “This Is My Data Life” he developed on Facebook.

This raised questions and concerns about how much Facebook users can trust Facebook with their personal data which resulted in a holistic review of data and privacy laws in place.<sup>4</sup> This review culminated in the General Data Protection Regulation (GDPR) by the European Union Parliament; it is the most important change in data privacy regulation in 20 years.<sup>5</sup>

# ABCs of GDPR

GDPR at a glance – Sage

“The GDPR sets out the principles for data management and the rights of the individual, while also imposing fines that can be revenue-based.”



The General Data Protection Regulation (GDPR) is a legal framework that sets guidelines for the collection and processing of personal data and information of individuals within the European Union (EU); the regulation is aimed at improving the way personal data is currently regulated within European Union countries. For clarity, “personal data” is classified as any information about a particular person – their name, birth date, email address, physical location, work information, religion, etc.

The GDPR sets out the principles for data management and the rights of the individual, while also imposing fines that can be revenue-based.<sup>6</sup> It was instituted to prevent data breaches through robust safeguards to protect individuals, granting them more hands-on control over the use of their personal data.<sup>7</sup> The regulation poses a number of vital implications as summarized by Sage, a software company, in the infographic above. It applies to all countries and not just countries in the European Union.



<sup>6</sup> Investopedia (2018) General Data Protection Regulation (GDPR). <https://www.investopedia.com/terms/g/general-data-protection-regulation-gdpr.asp#ixzz5JcASuOSU>  
<sup>7</sup> Rotimi F (2018) Why you should know about the GDPR. Available at: <https://guardian.ng/features/why-you-should-know-about-the-gdpr/>

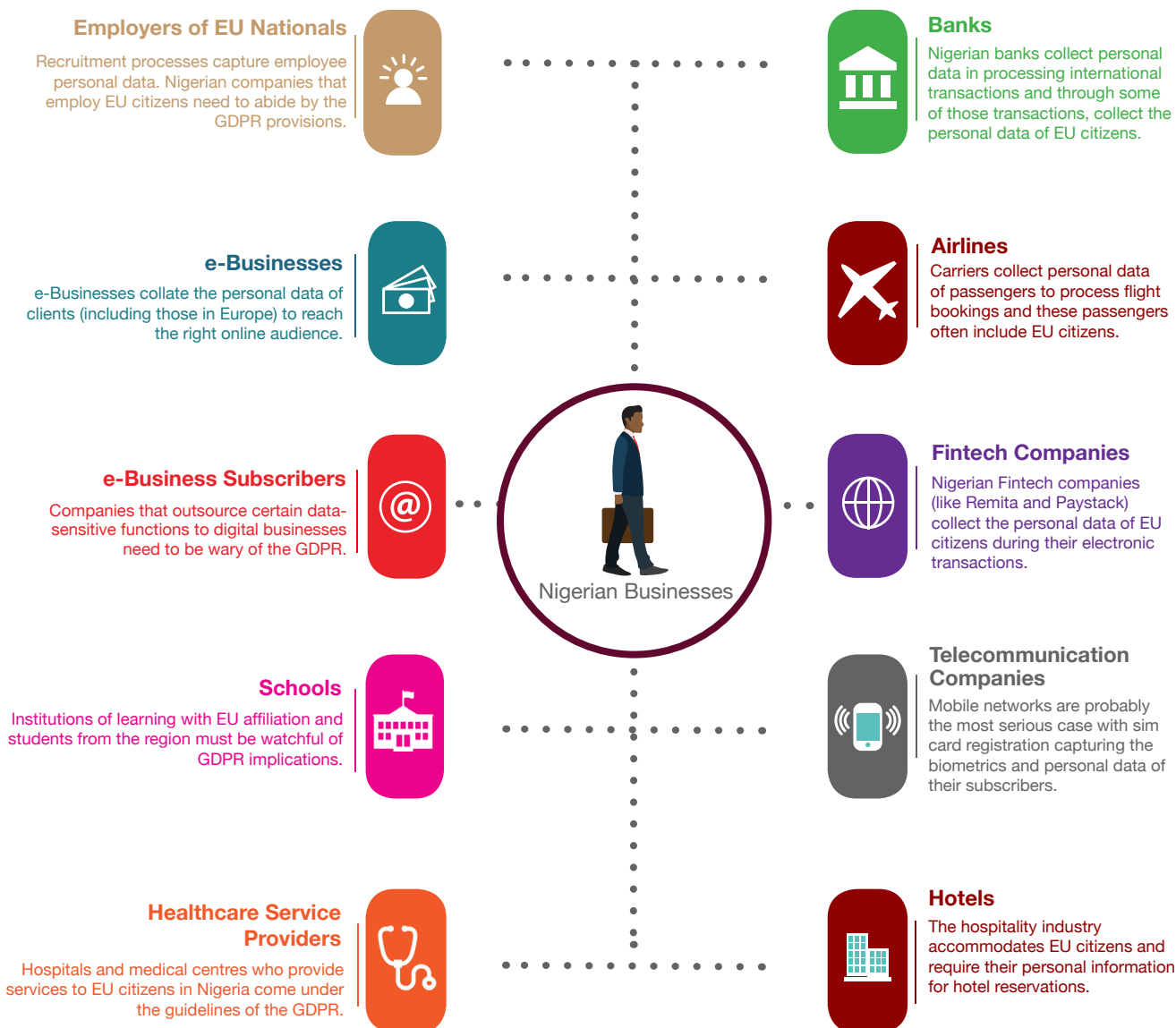


“ It is incumbent on controllers who use third-party data processors to ensure that they (the processors) are consistent with the GDPR guidelines.<sup>8</sup> ”

# GDPR’s coming for you

## Does your business fall into any of these categories?

What does this mean for organizations in Nigeria? Are they affected by the GDPR? The answer is – yes. The following categories of Nigerian businesses can be directly affected by the new privacy guidelines because of their interactions with EU citizens. If your business falls under any of these categories, non-compliance to the GDPR could significantly impact your business.



While this list is not exhaustive, Nigerian companies, businesses and organizations must recognize that once their product/service offerings or business activities capture EU citizens and/or their personal data, they should be GDPR compliant.

<sup>8</sup> Robin K. (2017) What does the GDPR mean to your third-party data processors? Available at: <https://martechtoday.com/gdpr-mean-third-party-data-processors-208098>





# Fall in line or pay a fine

*“ Violators risk up to €20,000,000 in fines or up to 4% of the company’s annual global turnover for the preceding year (whichever is greater). ”*

There are far-reaching consequences for businesses and organizations who are found non-compliant to the new privacy guidelines and the fines for non-compliance can be classified into two tiers:<sup>9</sup>

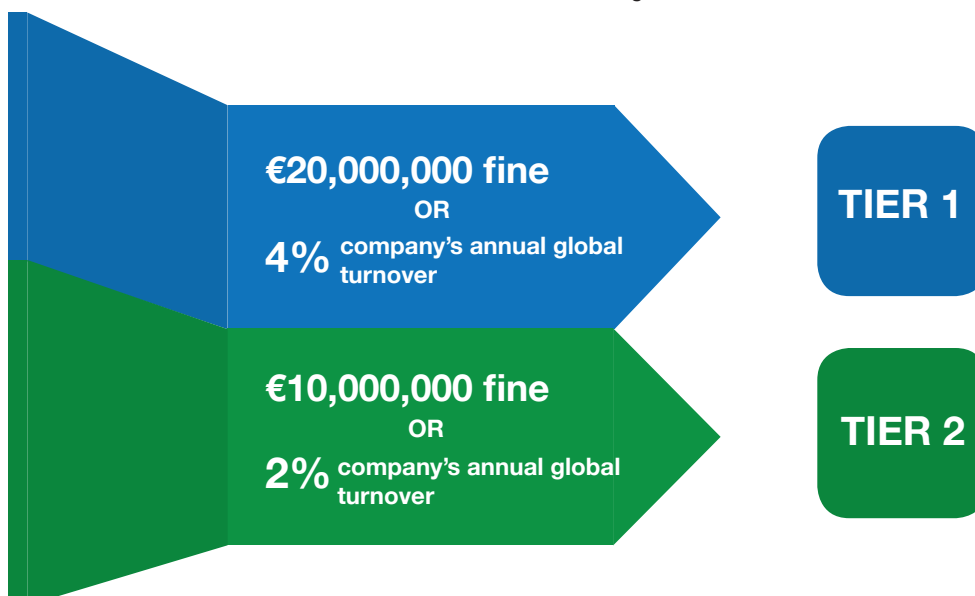
**Tier 1:** These are for offenses relating to obtaining consent, data subjects’ rights, rules governing data transfer, obligations to member states and violation of an order. Violators risk up to €20,000,000 (approx. ₦8.3 billion) in fines or up to 4% of the company’s annual global turnover for the preceding year (whichever is greater).

**Tier 2:** These are for offenses bordering on notification of a data breach to the data subject whose personal data was impacted, notification of a data breach to the supervisory authority, failure to properly designate a data protection officer (when required) and certain conditions surrounding obtaining a child’s consent. Violators risk paying €10,000,000 (approx. ₦4.2 billion) in fines or up to 2% of their annual turnover.

However, these penalties are subject to some conditions and are based on some factors:<sup>10</sup>

- The nature, gravity, and duration of the violation
- The categories of personal data that are affected
- Previous violations
- Intent or negligence
- Actual harm done and efforts to mitigate the damage to data subjects
- Degree of responsibility of the controller or processor
- Certifications and adherence to codes of conduct
- Reporting of the violation
- Cooperation (or lack thereof) with authorities

Also, warnings and reprimands (in addition to or instead of the imposition of fines) could be administered at the discretion of the supervisory authority. Defaulters could be relieved of their certification or ordered to take action to carry out one or more of the obligations under the regulation.<sup>11</sup>



<sup>9</sup> Debra L.S. (2017) Consequences of non-compliance with GDPR. Available at: <https://techtalk.gfi.com/consequences-of-non-compliance-with-gdpr/>

<sup>10</sup> Chapter 8, Article 83 – General conditions for imposing administrative fines; General Data Protection Regulation. Available at: <https://gdpr-info.eu/art-83-gdpr/>

<sup>11</sup> Chapter 6, Article 58 – Powers; General Data Protection Regulation. Available at: <https://gdpr-info.eu/art-58-gdpr/>



# 7 Steps to compliance

As a guide, the European Commission published seven steps to ensure compliance to the GDPR as follows:<sup>12</sup>

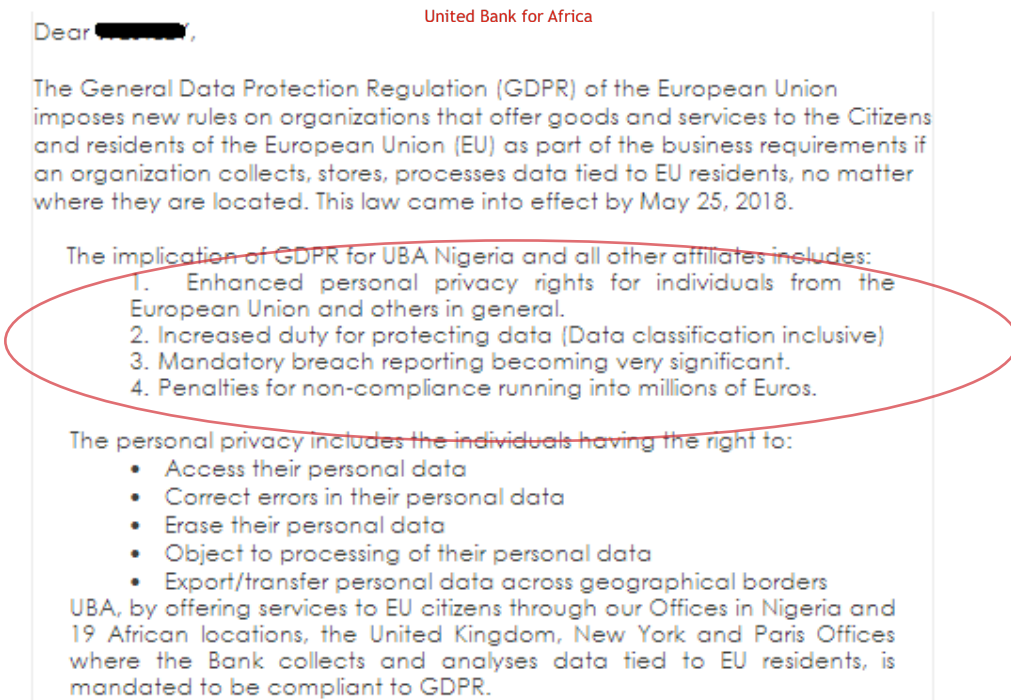


<sup>12</sup> European Commission (2018) Seven steps for businesses to get ready for the General Data Protection Regulation. Available at: [https://ec.europa.eu/commission/sites/beta-political/files/data-protection-factsheet-business-7-steps\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/data-protection-factsheet-business-7-steps_en.pdf)



“For many companies, the GDPR has changed the way they conduct business.”

To comply with the GDPR, Nigerian businesses must address three things: people, processes, and preparedness.<sup>13</sup> To treat these, organisations must manage their data processing activities like they manage their money.<sup>14</sup> After the GDPR implementation, international businesses and organizations immediately disseminated customer and subscriber notices that informed them of the new data and privacy regulation and its impact on their business. Only a handful of Nigerian companies have followed suit.



Screenshot of UBA email notification to customers on the GDPR and its personal privacy implications

For many companies, the GDPR has changed the way they conduct business. Some businesses have outsourced the burden of compliance to third-party data managers like Egress and OneTrust while others have had to undergo internal reorganization. They have established privacy centres or hired data privacy specialists to carefully vet their data management activities.

## Summary

It has been established that the GDPR has clear relevancies to the Nigerian space. Based on the tenets of the regulation, Nigerian companies must review their data management activities and restructure their processes to accommodate the provisions of the new regulation.

From the communications perspective, the GDPR will have a double impact on corporate communications. Communications professionals will need to develop information and policies that are required under the new regulation for their organizations. Additionally, you also need to ensure that corporate communications activities are GDPR compliant, especially in relation to storing and processing stakeholder information. Communication initiatives like surveys, polls, focus groups and other research-based activities will entail collecting personal data for analysis purposes; therefore, compliance is critical.

Non-adherence to the new privacy guidelines poses risks of heavy sanctions. Therefore, it is recommended that precautionary steps (as prescribed by the regulation to mitigate these risks) are taken.

<sup>13</sup> John Edokpolor, Lead Commercial Attorney, Microsoft Emerging Markets (MEA) quoted in Emma O. (2018) Nigeria: 'Eu's Gdpr Law Will Boost Data-Driven Business in Nigeria'. Available at: <http://allafrica.com/stories/201804090746.html>

<sup>14</sup> John Edokpolor, Lead Commercial Attorney, Microsoft Emerging Markets (MEA) quoted in Emma O. (2018) Nigeria: 'Eu's Gdpr Law Will Boost Data-Driven Business in Nigeria'. Available at: <http://allafrica.com/stories/201804090746.html>