

Flowchart: Does GDPR apply to our business?

The General Data Protection Regulation (**GDPR**) becomes enforceable across the EU from 25 May 2018. This flowchart is designed to assist international businesses to determine whether the requirements of the GDPR will apply to them. It focusses on those business generally based outside the EU/EEA but with some business activity within the EU/EEA. Please note this is a summary guide and does not constitute a legal advice.

Background

GDPR attaches to the processing of personal data by 'controllers' or 'processors', and this will apply to all such persons established in the EU. However, the GDPR also extends beyond the borders of the EU to apply to controllers and processors which are not established in the EU, in cases where the processing activities are related to the offering of goods or services to data subjects in the EU (irrespective of whether the offering is free), or the monitoring of such data subjects' behaviour as far as their behaviour takes place within the Union.

The GDPR will also be relevant to consider where businesses which are processing the personal data of natural persons, in a context where the clients of the business may be companies – eg consider email addresses and contact details of individuals within a company.

Glossary of terms

European Economic Area (EEA) includes EU countries and also Iceland, Liechtenstein and Norway. The GDPR is expected to be implemented in Norway, Liechtenstein, and Iceland in a similar way to the EU.

European Union (EU) includes the following countries: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Please note that in 2016, the United Kingdom voted by referendum to withdraw from membership in the EU.

Processing refers to any operation performed on personal data, whether automated or not, and includes: collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

Personal data refers to any information relating to an identified or identifiable natural person. It is important to note that a business which may be working with corporate entities, may still be processing data relating to individuals within those corporate entities. By way of example, employee details and names or emails of individuals within corporations can constitute personal data.

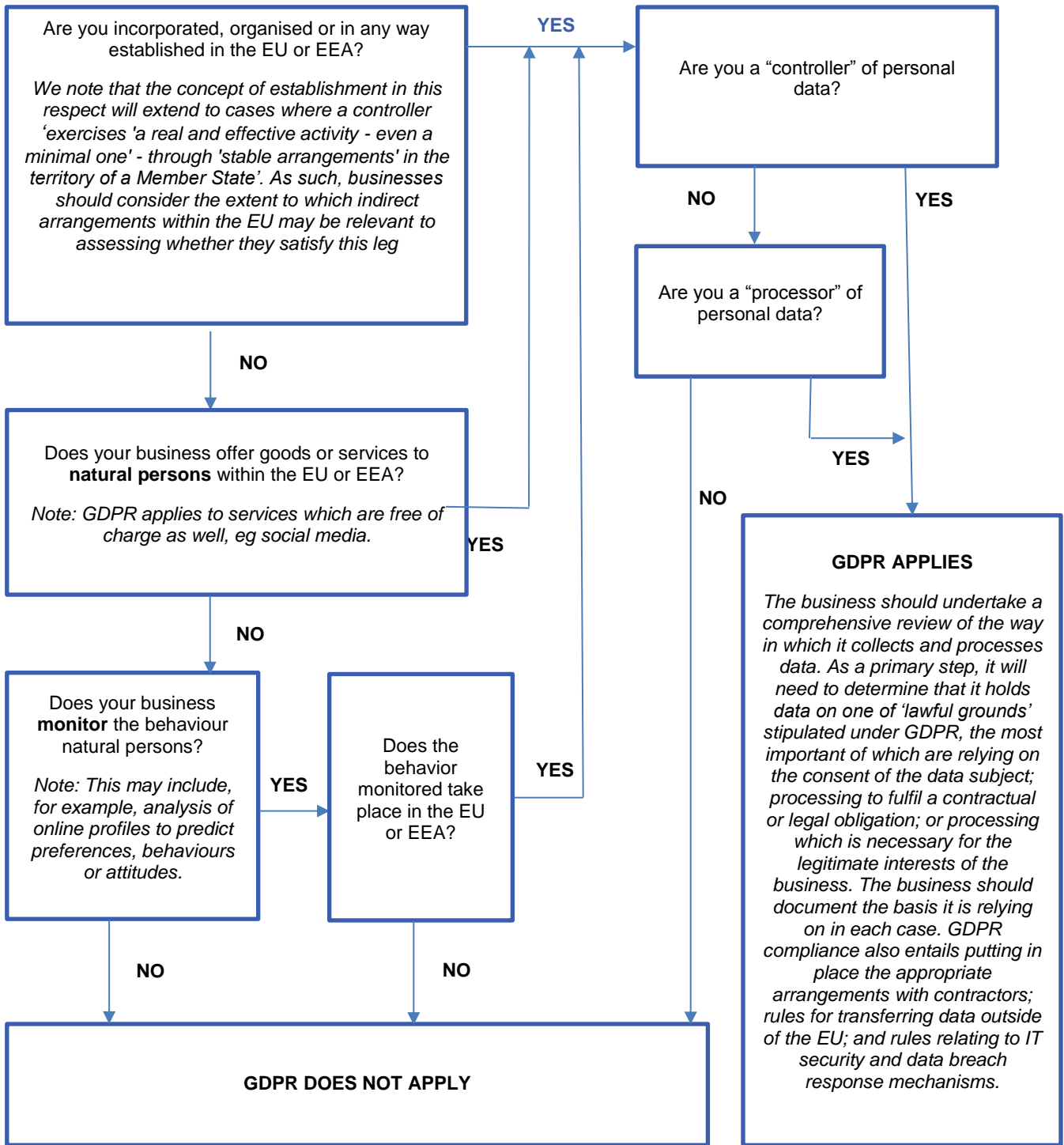
Identifiable natural person is a person who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. An identified natural person is also a *data subject*.

Controllers: A controller is a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the "purposes and means" of the processing of personal data. This would typically be the principal provider or supplier of a service to customers.

Processors: A processor is a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller. This would typically be an intermediary of some sort working on behalf of the controller to assist it in collecting or disseminating personal data.

The flowchart on the following page is designed to assist international businesses to determine whether the requirements of the GDPR will apply to them.

START



© Harneys, May 2018 - 12642518

Harneys is a leading international offshore law firm. From more than 12 offices around the globe, Harneys advises the world's top law firms, financial institutions and corporations on the laws of Bermuda, British Virgin Islands, Cayman Islands, Cyprus and Anguilla. For more information about Harneys please visit www.harneys.com or contact us at marketing@harneys.com.

The foregoing is for general information only and not intended to be relied upon for legal advice in any specific or individual situation. Bermuda legal services are provided through an exclusive association with Zuill & Co which is an independently owned and controlled