

EUROPEAN UNION GENERAL DATA PROTECTION REGULATION (GDPR)

DO YOU HAVE AN EU REPRESENTATIVE?

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CHECKLIST

Who is an EU Representative under Art. 27 of GDPR?

- An EU-based designee of a non-EU establishment (Data Controller or Data Processor) that is subject to GDPR. EU Representative is the Controller's or Processor's contact person in respect of European privacy supervisors and data subjects in all matters relating to data processing, to ensure compliance with this GDPR.
- An **individual** or **corporation** can play the role of an EU Representative.
- The purpose of such representation is to enable the European data protection supervisory authorities to ensure compliance with the GDPR, by being able to control or supervise the activities of the non-EU establishments that are subject to the GDPR, through their respective representatives in the EU.
- A **non-EU** establishment is subject to the GDPR if it regularly undertakes one of the following activities:
 - a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to data subjects in the EU; and/or
 - b) the monitoring of the behaviour of data subjects in the EU, as far as their behaviour takes place within the EU. This provision concerns any company that offers goods or services online to EU customers or uses cookies or similar technologies to track EU data subjects. Such establishments must comply with the GDPR and must designate an EU Representative.
- **EXCEPTION:**
A non-EU establishment is exempted from designating an EU Representative when the processing is only occasional and does not include, on a large scale, processing of special categories of data as referred to in Article 9(1) GDPR or processing of personal data relating to criminal convictions and offences referred to in Article 10 GDPR, and such processing is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing. Non-EU public authorities and bodies are equally exempted (see Art. 27(2) GDPR).

Are you subject to the GDPR?

- All establishments in the EU are subject to the GDPR, irrespective of whether the establishment is the company's head office or branch office or a representative, and irrespective of where the processing takes place.

Disclaimer

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. This is a general checklist that will hopefully help your business understand EU Representative requirement under Art. 27 of GDPR. It offers a level of minimum requirement and best practise.

Cyberlegis RA GmbH does not accept any liability for the correctness of the checklist. You may use this checklist internally in your company. It is not meant to be freely distributed. Any commercial use is forbidden.

Have only an affiliate company in the EU?

- Unless the European affiliate of a non-EU establishment is a public body, or a branch or a “representation” in the EU, the non-EU establishment remains obliged to designate an EU Representative.
- The non-EU establishment can choose to designate its EU affiliate as its Representative. However, this type of representation has some shortcomings.
 - a) The object of the EU affiliate may not be data protection, so it would be of little help to the non-EU affiliate.
 - b) EU Representation and the associated data protection activities may not fall within the scope of the company’s insured activities. Thirdly and lastly, giving advice and monitoring the activities of the non-EU company as well as cooperating with the European regulators on the latter’s behalf, may not fall within the scope of activities of the DPO of the European affiliate. Moreover, this may rather seem to be over-demanding, especially if the DPO is a natural person.

What if a data subject under GDPR fails to designate an EU Representative?

- > It is worth noting that the GDPR, in force since 25 May 2018, is known for being the most rigorous privacy law on earth at the moment, particularly due to its heavy fines and its extraterritorial character. If a foreign company that is subject to the GDPR refuses to designate an EU Representative as required, then the former is infringing the GDPR and runs the risk of being imposed an administrative fine of up to ten million Euros (10 000 000 EUR) or up to 2 percent of a company’s total worldwide annual turnover of the preceding financial year, whichever is higher. Ignorance of the GDPR would not be an excuse, and the intentional or negligent (wilful blindness)

character of the infringement (failure to designate an EU Representative) may rather constitute aggravating factors. See Art. 83(1), (2) & (4a) GDPR. It is for these very reasons that most foreign companies are in a haste to designate their respective EU Representatives, and CYBERLEGIS is here to help you have one.

About Us

- Cyberlegis RA GmbH (**CYBERLEGIS**) is a an European Tech Data Law Firm in Munich.
- CYBERLEGIS specializing in EU Representative Services under Art. 27 of GDPR. The goal of CYBERLEGIS is to help its clients comply with **European** privacy laws and provide best practice under Art 27.

Why hire CYBERLEGIS as your EU Representative?

- **EFFICIENCY:** Since May, 2018 CYBERLEGIS is a specialized provider for Art 27 GDPR services. CYBERLEGIS works on your request within 6 hours.
- **COST EFFECTIVE:** At just EUR 333 net per month CYBERLEGIS provides premier EU representation services.
- **INSURANCE COVERAGE:** Since all EU Representatives installed by CYBERLEGIS are specialized Privacy lawyers, the service comes along with a default liability of 1 Million Euros (with higher representation available at extra cost).
- **PROFESSIONALISM:** CYBERLEGIS is sensitive to providing quality service to its clients. Thus, CYBERLEGIS designates only specialized Art. 27 GDPR Experts to act as EU Representatives or handle representation-related matters for the clients. When you choose the CYBERLEGIS, an expert with data privacy expertise is assigned to you.

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- **ASSURED AVAILABILITY:** In an effort to satisfy its clients, the designated EU Representative would be reachable not only from Monday to Friday (09:00h – 17:00h) via a team of English speaking secretaries, but equally at weekends via e-mail and cell phone.
- CYBERLEGIS has minimum 3 legal experts, working around the clock to assist the clients fulfil the GDPR requirements. Thus, at any given point in time, a CYBERLEGIS representative is always there to assist you with your requirements.

How do I designate CYBERLEGIS as my EU Representative?

- Just email us at: niedermeier@cyberlegis.io and we will be happy to answer all your question in a Zoom or WebEx meeting.
- We have standard document designating one of our expert Lawyers as your EU Representative. In this regard, you would receive a draft designation document, which you would print, sign, and send by post, in accordance with Art. 27(1) GDPR.
- Please connect with "RA Robert Niedermeier" on LinkedIN - www.linkedin.com/in/ra-robert-niedermeier.
Robert Niedermeier CIPP/E CIPT CIPM FIP (Mobile +49 171 2440099).

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