

CNPD Course: Data Protection Basics

Basic elements



Belval – Esch-sur-Alzette

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Outline

1. Introduction
- 2. Basic elements**
3. The rights of the data subjects
4. The obligations of controllers and processors
5. The role of the CNPD

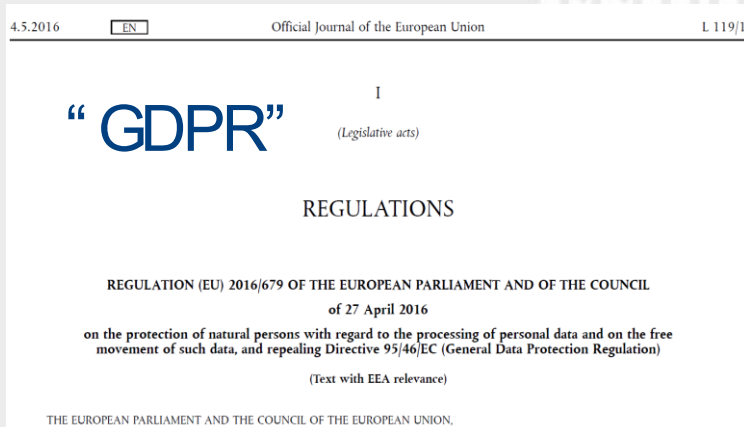
Basic elements - Overview

1. Legal framework
2. What is “personal data”?
3. What is “processing”?
4. Key data protection actors
5. Main principles

1. Legal framework (1/3)

- Regulation (EU) 2016/679 of 27 April 2016 “**the GDPR**”
 - Draft bill n° 7184
- Directive (EU) 2016/680 of 27 April 2016 (“**Criminal Justice Directive**”)
 - Draft bill n° 7168
- Act of 11 August 1982 on the protection of privacy
- **Amended Act of 2 August 2002**, implementing Directive 95/46/EC
 - “**the Law**”
- Amended Act of 30 May 2005, implementing Directive 2002/58/EC (electronic communications)

1. Legal framework (2/3)



- *New legal framework*
- ✓ Strengthening of individuals' rights
- ✓ An increased responsibility for controllers
- ✓ A more important role for data protection authorities

- *Harmonisation:*

- ✓ The same rules in all 28 countries of the EU
- ✓ Directly applicable from 25 May 2018
- ✓ To all organisations active on EU territory

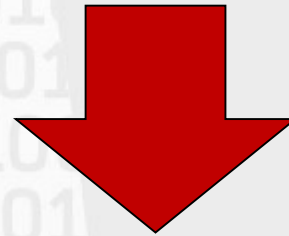


1. Legal framework (3/3)

A paradigm shift

Prior formalities

Prior control



Less
bureaucracy,
yet **more**
demanding for
controllers and
processors

Principle of Accountability

Subsequent control

2. What is “personal data” ? (1/3)

“Any information relating to an identified or identifiable natural person ...”

Article 4(1) GDPR

2. What is “personal data” ? (2/3)

- “Clear text data”:

Data that allows the immediate identification of a person

- Pseudonymised data:

Possibility to identify a person after a more or less significant research effort

- Anonymised data:

Absolute impossibility to link the data to a specific person

2. What is “personal data” ? (3/3)

Special categories of data = “sensitive data”:

- ✓ racial or ethnic origin
- ✓ trade union membership
- ✓ religious or philosophical beliefs
 - ✓ political opinions
 - ✓ health data
 - ✓ data on sex life
 - ✓ genetic data
 - ✓ **biometric data**
 - ✓ judicial data

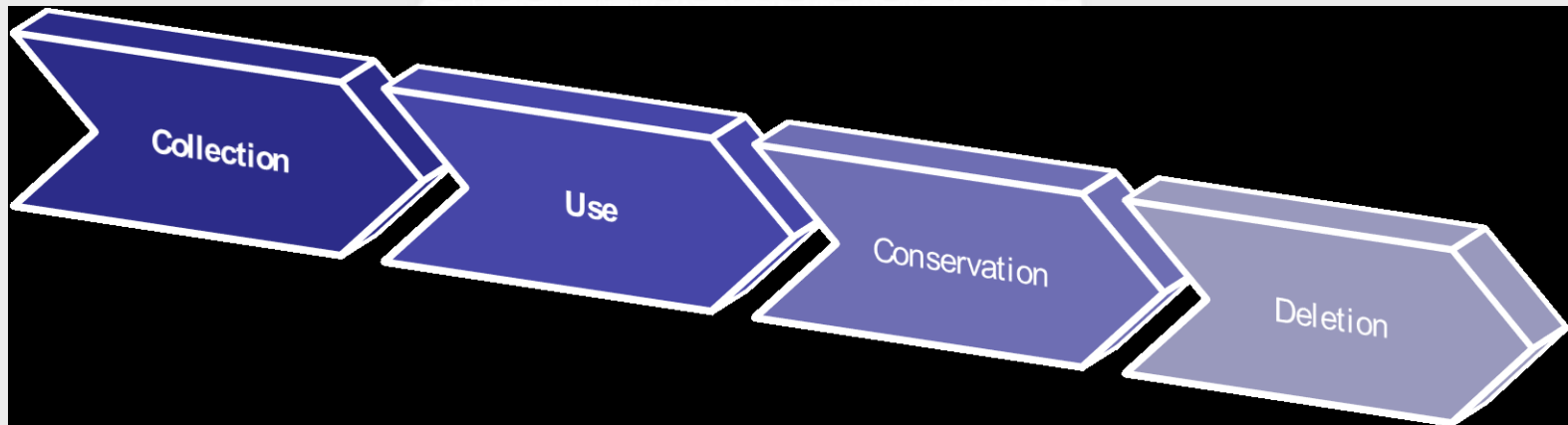
3. What is “processing” ? (1/2)

*“ Any operation or set of operations which is performed on personal data **or on sets of personal data**, whether or not by automated means, such as 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”*

Art.4 (2) GDPR

3. What is “processing” ? (2/2)

The life-cycle of a processing activity:



4. Key data protection actors (1/3)

- Data subject
- Third parties
- Supervisory authorities
- Controller
- Processor
- Data protection officer

4. Key data protection actors (2/3)

- Controller

- ✓ determines the purposes and means of the processing

- Processor

- ✓ processes personal data on behalf and upon instruction of the controller

4. Key data protection actors (3/3)

- Data Protection Officer

- ✓ Safeguards the application of the legal requirements within the company
- ✓ Independent
- ✓ Must be given adequate resources & time to fulfil duties

5. Main principles (1/7)

**Lawfulness,
fairness and
transparency**

**Purpose
limitation**

**Data
minimisation**

Accuracy

**Storage
limitation**

**Integrity and
confidentiality**

Accountability

5. Main principles (2/7)

5.1 Lawfulness = legal basis for processing (1/2)

“General regime” = processing activity permitted, if :

- ✓ Consent
- ✓ Necessary for compliance with a legal obligation
- ✓ Necessary for a contract or pre-contractual measures
 - ✓ Necessary for a mission in the public interest
- ✓ Necessary to protect the vital interest of the data subject
- ✓ Necessary for the legitimate interest of the controller

5. Main principles (3/7)

5.1 Lawfulness = legal basis for processing (2/2)

Sensitive data = processing activity prohibited except for within exception of GDPR :

- ✓ **Explicit consent**, unless where law states that prohibition may not be lifted
- ✓ Processing is necessary for the purposes of carrying out the obligations and exercising specific **rights of the controller or of the data subject in the field of employment and social security and social protection law** on the basis of a legal obligation or collective agreement...
- ✓ Etc.

5. Main principles (4/7)

5.2 Purpose limitation

- *Purpose* = objective pursued by the controller for the processing of personal data
 - ✓ Purpose(s) must be defined in advance
 - ✓ Data must only be collected for specified, explicit and legitimate purpose(s)
 - ✓ Data cannot be further processed in a way incompatible with the initial purposes (principle criterion = reasonable expectation of the data subject)

5. Main principles (5/7)

5.3 Data minimisation

- = *only process the data necessary to achieve the purpose*
 - ✓ Data must be adequate, relevant and not excessive in relation to the purposes for which they are collected

Need to have, not nice to have

5.4 Accuracy

- = *the data must be accurate and, if necessary, kept up to date*
 - ✓ Every effort must be made to delete or rectify inaccurate or incomplete data

5. Main principles (6/7)

5.5 Storage limitation

- = *do not store data for longer than is necessary for the purposes for which the data are processed*
 - ✓ If the purpose is fully achieved, the data must either be (definitively) erased or (fully) anonymised
 - ✓ The adequate retention period depends on the purpose
→ case-by-case analysis
 - ! Data cannot be retained forever only because it *might perhaps* be useful *one day* !

5. Main principles (7/7)

5.6 Accountability

- = *implement appropriate measures + be able to demonstrate compliance*
- How?
 - ✓ Organisational and technical measures
 - ✓ Maintaining documentation demonstrating compliance with the GDPR requirements
 - ✓ Transparency towards the data subject and the CNPD





Thank you for your attention!

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