

# Basic principles and legal basis for processing personal data

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# Learning objectives

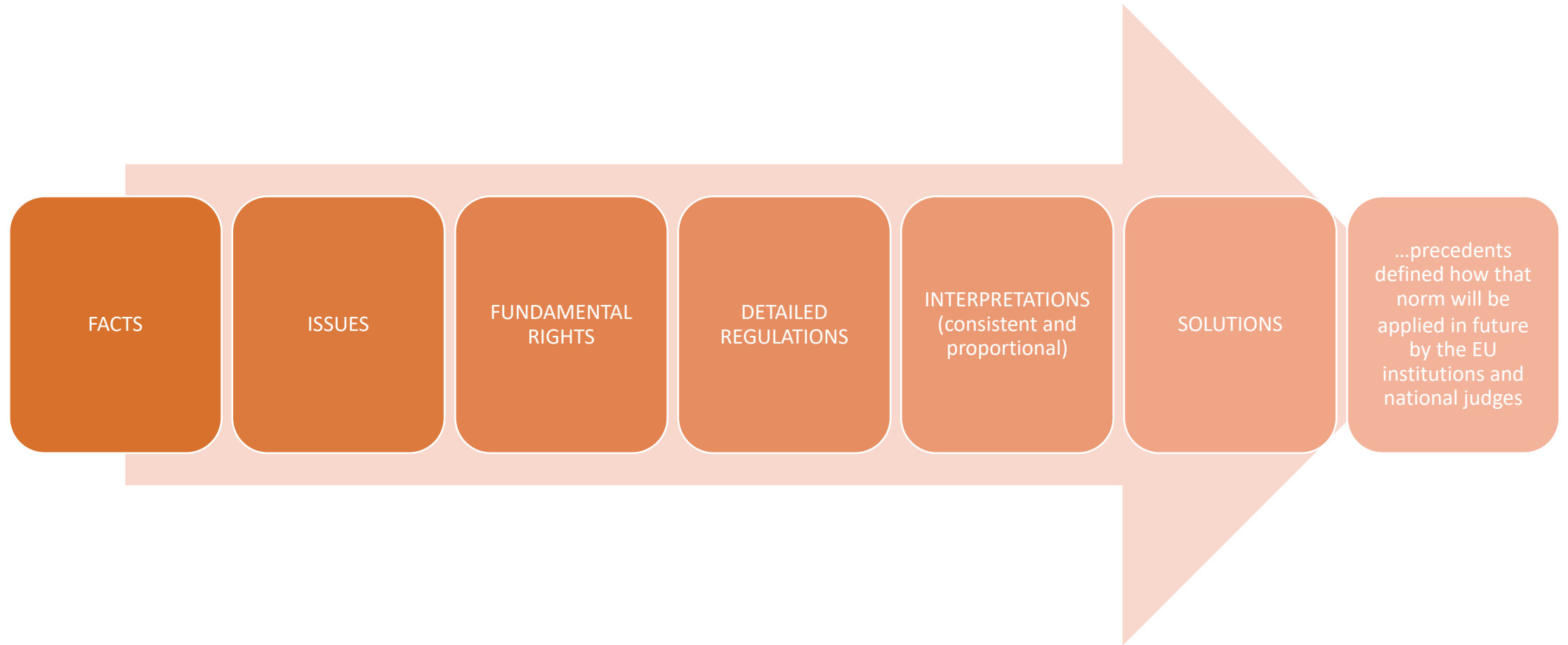
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- Case discussion: *Digital Rights Ireland*\*
- Principles and rules [in data protection law]
- Legal basis [for processing personal data]

# Digital Rights Ireland



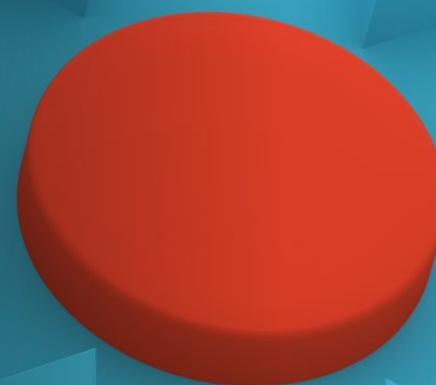
# In a nutshell...





# 1. A principle based approach

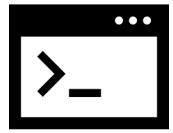
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# Legal principles

- as optimization commands
- as norms commanding that something be realized to the highest degree that is actually and legally possible



# Legal rules

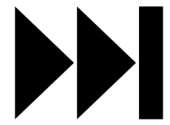
- as norms that can only be either complied with or not
- that require that one do exactly what it demands, nothing more and nothing less
- as definitive commands



# Lawfulness, Fairness, and Transparency

1. Personal data shall be:
  - (a) processed lawfully, fairly and in a transparent manner in relation to the data subject



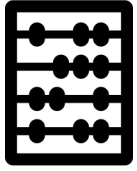


## Purpose limitation

1. Personal data shall be:

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;

further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, [...] not be considered to be incompatible with the initial purposes



# Data minimisation

- 1. Personal data shall be:  
(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed



## Accuracy

1. Personal data shall be:

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay



## Storage limitation

1. Personal data shall be:

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;

personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes [...] subject to implementation of the appropriate technical and organisational measures required by this regulation in order to safeguard the rights and freedoms of the data subject



# Integrity and confidentiality

1. Personal data shall be:

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures



## Accountability

2. The controller shall be responsible for, and be able to demonstrate compliance with, [the basic principles of data protection]



# Legal Basis

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## Legal Basis

*i.e.*, **Yes, you can!**

- Legal basis is generally intended as the **lawful ground for doing something**
- Who aims at doing something should **check if he/she is entitle to act, especially for innovative projects**
- Personal data protection legislation provides the legal bases for the processing of this kind of contents





## Which are the Legal Basis? EUCFR

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### *EUCFR – Article 8*

#### **Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and **on the basis of the consent** of the person concerned or **some other legitimate basis laid down by law**. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.



# Which are the Legal Basis? GDPR

## GDPR – Article 6

### *Lawfulness of the processing*

Processing shall be lawful only if and to the extent that at least one of the following applies:

- the data subject has given **consent** to the processing of his or her personal data for one or more specific purposes;
- processing is necessary for the performance of a **contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- processing is necessary for compliance with a **legal obligation** to which the controller is subject;
- processing is necessary in order to **protect the vital interests** of the data subject or of another natural person;
- processing is necessary for the performance of a **task carried out in the public interest** or in the exercise of official authority vested in the controller;
- processing is necessary for the purposes of the **legitimate interests pursued by the controller or by a third party**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child



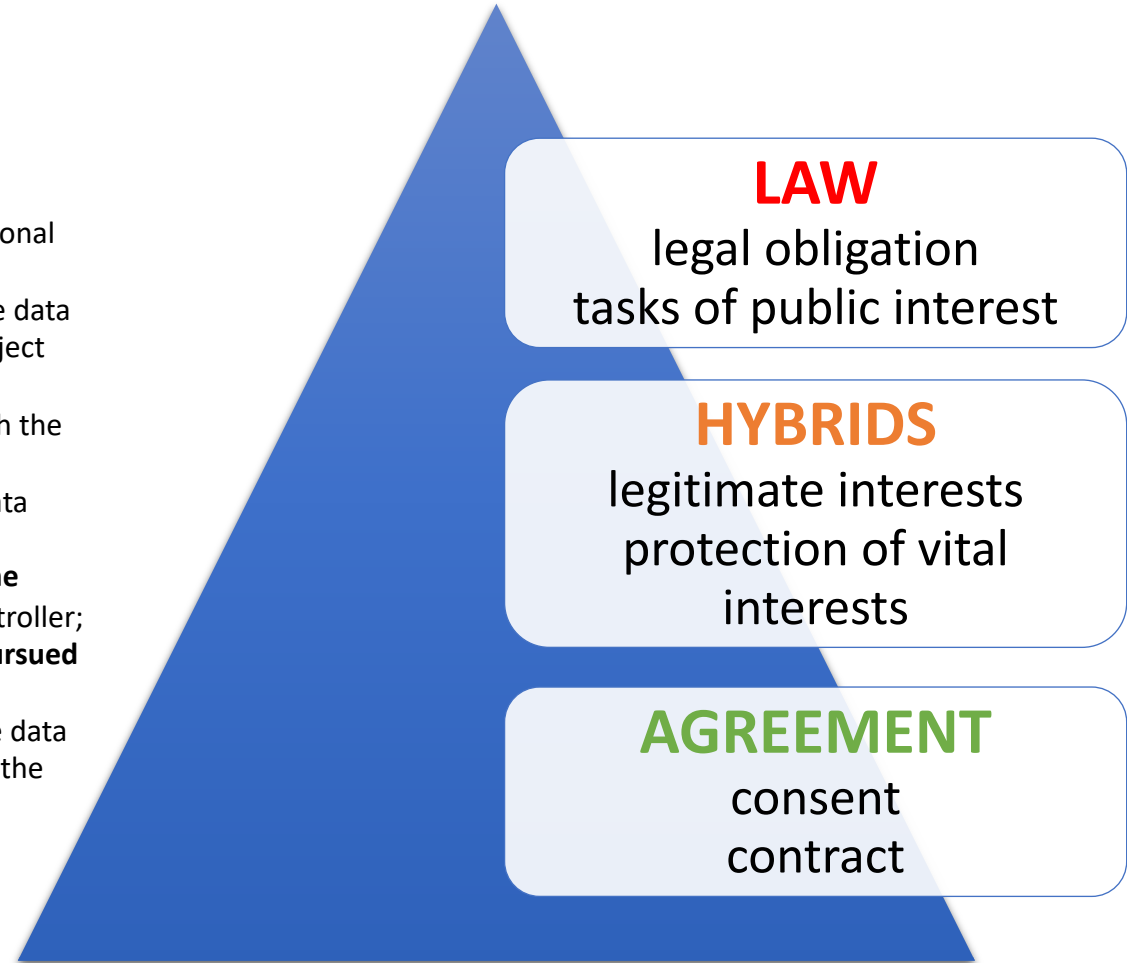
# ...translating from “LEGALIZE”

## GDPR – Article 6

### *Lawfulness of the processing*

(1) Processing shall be lawful only if and to the extent that at least one of the following applies:

- a. the data subject has given **consent** to the processing of his or her personal data for one or more specific purposes;
- b. processing is necessary for the performance of **a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- c. processing is necessary for compliance with **a legal obligation** to which the controller is subject;
- d. processing is necessary in order to **protect the vital interests** of the data subject or of another natural person;
- e. processing is necessary for the performance of **a task carried out in the public interest** or in the exercise of official authority vested in the controller;
- f. processing is necessary for the purposes of the **legitimate interests pursued by the controller or by a third party**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child



# Limiting Fundamental Rights (**conditions**)

## **EUCFR – Article 52, § 1** **Scope of guaranteed rights**

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

provided by law

respectful of the essence of  
touched fundamental rights

proportional

necessary for a general interest  
(society)

needed to protect the rights  
and freedoms of others

# Quality of Law

in general, legal provisions have to be

- **clear and predictable**
- **non-discriminatory**
- **applied by independent courts**
- **under procedural guarantees**

provided by law

respectful of the essence of  
touched fundamental rights

proportional

necessary for a general interest  
(society)

needed to protect the rights  
and freedoms of others

# Consent definition



## GDPR – Article 4

### *Definitions*

(11) Consent of the data subject means any **freely given, specific, informed and unambiguous indication** of the data subject's wishes by which he or she,

**by a statement** or **by a clear affirmative action**, signifies agreement to the processing of personal data relating to him or her

# Conditions for the Consent

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GDPR – Article 7

## **DEMONSTRABLE CONSENT**

1. Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.

## **DISTINGUISHABLE, INTELLIGIBLE, ACCESSIBLE**

2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, **in an intelligible and easily accessible form, using clear and plain language**. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.

## **RETRACTABLE (RIGHT TO WITHDRAW)**

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. **It shall be as easy to withdraw as to give consent.**

## **FREELY GIVEN**

4. When assessing whether consent is freely given, utmost account shall be taken of whether, *inter alia*, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that **is not necessary for the performance of that contract.**

# Specifications in the **Recitals**

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**no. 32** «Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided».

**no. 33** «It is often not possible to fully identify the purpose of personal data processing for scientific research purposes at the time of data collection. Therefore, data subjects should be allowed to give their consent to certain areas of scientific research when in keeping with recognised ethical standards for scientific research. Data subjects should have the opportunity to give their consent only to certain areas of research or parts of research projects to the extent allowed by the intended purpose»

**no. 42** «Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware of the fact that and the extent to which consent is given. [...] A declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.»

**no. 43** «In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation. Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the consent despite such consent not being necessary for such performance.»