



Data Subjects and and their rights (I)

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learning objectives

- Who is the data subject?
- What about children?
- Intro to Data subject's rights



1. Data subjects

Who is the data subject?

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.

- **Natural person**
- **Individual** (no groups)
- **No distinction** on the basis of a person's economic status, literacy level, age, gender, mental capacity, nationality

...Does this **UNIFORMITY** work?

YES

- The current approach ensure a **uniform level of protection** to all
- Treating all the data subjects in the same way **simplifies rules drafting and application**
- The **data controller** is obliged to **adhere to all the rules**, regardless who is the data subject

NO

- Data subjects are **not a homogeneous group** of people
- Some types of **personal data** are more **sensitive** than others
- Some people experience different forms of **vulnerability** or are placed in **disadvantage positions**

A group of five diverse children are sitting on a grey couch in a brightly lit room. From left to right: a young girl with dark hair is looking at a tablet; a child is holding a white smartphone up to their face; a girl with curly hair is looking at a black smartphone; a boy with dark hair is looking at a black smartphone; and a boy in a red and white checkered shirt is looking at a tablet. The background shows a window with white curtains and an orange curtain, and a wall with a clock and some papers.

2. Minors as data subjects

A slightly diversified approach for:

Special Categories of **Data**



Special Categories of **Subject**



Children Data Protection: Why?

«Children merit specific protection with regard to their personal data, as **they may be less aware of the risks**, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such **specific protection** should, in particular, apply to the use of personal data of children **for the purposes of marketing or creating personality or user profiles** and the collection of personal data with regard to children when using **services offered directly to a child** [...]»

GDPR, *Recital 38*



Who is a child?

- The definition of a child has societal and cultural implications
- Different cultures and EU Member States view this issue in divergent ways
- Even though a lack of common definition will diminish harmonization, this matter is left to the MSs

- According to **GDPR** a child is:
 - a subject that is **below 16 years old**
 - but the Member States can provide a lower age, **not below 13 years**



Problem solving exercise

As a major national child protection charity, the We4Kids Association processes large quantities of highly sensitive special category data. It is often necessary for the charity to share personal data with a range of agencies and organizations involved promoting the interests and rights of the children. Looking at the fundamental principles for personal data processing, *which should be the main concerns of We4Kids to be goals with the GDPR?* (Please, choose 2 principles and structure your considerations on these latter)

Problem solving exercise

Alice is a digital entrepreneur. She is going to launch a new app providing services of social networking and contents sharing. Her main target is the teenager population (people at a lower age than 18) of the European market. Alice is well aware that her business project is based on the use of personal data of a delicate category of subjects. According to the GDPR, what is the best solution to have a compliant personal data processing?



3. Data Subject Rights (I)

Transparency

- The controller shall take appropriate measures to provide any information [...] and any communication relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child.
- The information to be provided to data subjects [...] may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.

Justice

- The controller shall facilitate the exercise of data subject rights
- Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:
 - charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or
 - refuse to act on the request
- The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

subjects and data

- where the controller has reasonable doubts concerning the identity of the natural person making the request [...], the controller may request the provision of additional information necessary to confirm the identity of the data subject.

Right to Information

- the identity and the contact details of the controller
- the purposes of the processing
- the legal basis for the processing
- the recipients or categories of recipients of the personal data
- the intention to transfer personal data to a third country or international organisation
- the period for which the personal data will be stored
- the existence of the DS's rights
- the right to lodge a complaint with a supervisory authority

Right of Access

The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:

- the purposes of the processing
- the categories of personal data concerned
- the recipients or categories of recipient
- in particular recipients in third countries or international organisations
- the envisaged period for which the personal data will be stored
- a copy of the personal data undergoing processing

The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Right to Rectification

The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her.

Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement

Right to Restriction of Processing

The data subject shall have the right to obtain from the controller restriction of processing where one of the following applies:

- the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data
- the processing is unlawful, and the data subject opposes the erasure of the personal data and requests the restriction of their use instead
- the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims
- the data subject has objected to processing pending the verification whether the legitimate grounds of the controller override those of the data subject



Right to Object

- The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her.
- The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims



Date: Last 6 months

+ NEW

** Marketing purposes

- Where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.
- Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant, the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest

Average position

25.2

Multiple choice Q. sample

1. *Which of the following statements best describes the scope of the right to access?*
 - a. The data subject always has the right to obtain information about the processing operations concerning her/his personal data
 - b. The data subject always has the right to obtain a copy of all the personal data concerning his/her personal data processed by the controller
 - c. The data subject had the right to obtain from the controller confirmation about the processing operations concerning her/his personal data, access to the personal data and obtain the main information on the controller and the ongoing processing activities.

Problem solving exercise

Paul is a doctorate candidate that aims to apply for very competitive positions in some outstanding research centers. Before submitting his applications, he asks for the advice of a professional reputational manager. After a careful inquiry, his consultant finds out some discrediting posts that may negatively affect Paul's applications. Unfortunately, these are not directly accessible entering Paul's identifying information. Anyway, these contents are accessible if you carry out more in-depth research. *According to the GDPR, what would be the best remedy available within the data subject's rights? And do you see any problem about the exercise of this right?*

Problem solving exercise

Mark applied for an open position to the JobOfLife, a new tech startup now operating on an international scale. The application procedures required to submit a personal resume, a copy of an ID document and a self-certification document where the candidate declares having no criminal pending charges and no personal or family cases of psychiatric disturbs. *According to what you learned while studying the GDPR, what is your opinion about this situation? And which is your suggestion for the data subject in order to defend his rights? (One or two advices)*