Obligations of a controller –
A walk through the GDPR

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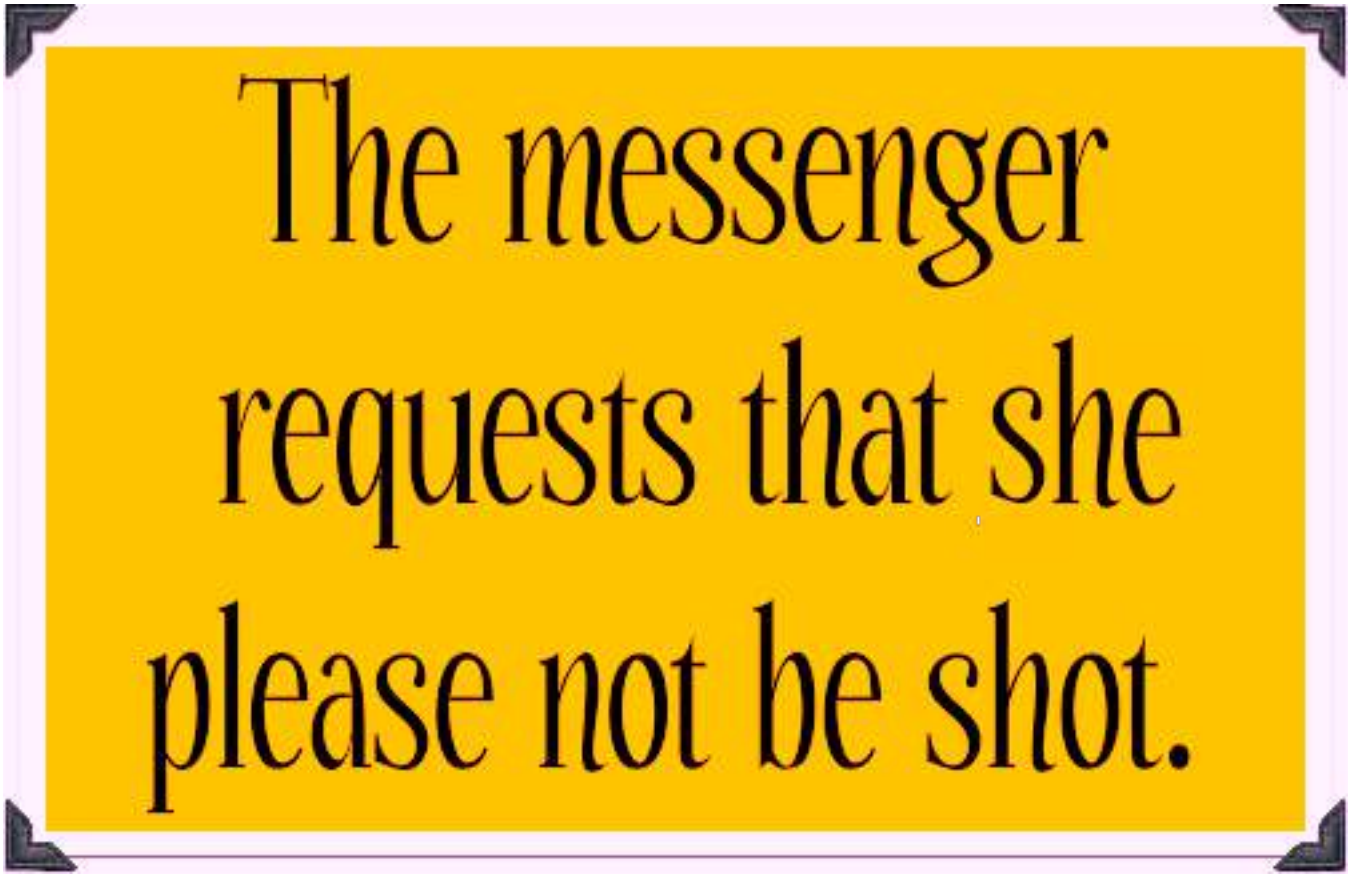
First things first…



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The heart of the GDPR

— The most important principles

Lawfulness

Art. 6 Legal Basis

Art. 9 Special categories of data

Art. 44-49 Transfer to third countries or international organisations

Fairness

Art. 5.1 (b) purpose limitation

Art. 5.1 (c) data minimisation

Art. 5.1 (d) accuracy

Art. 5.1 (e) storage limitation

Art. 5.1 (f) integrity and confidentiality

Art. 16-21 data subjects' rights

Art. 5.1 Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject

('lawfulness, fairness and transparency')

Transparency

Art. 12-15 data subjects' rights, Art. 30 Records of processing

Art. 5.2 The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

The GDPR for controllers

CHAPTER IV

Controller and processor

Section 1

General obligations

Article 24

Responsibility of the controller

→ In the following:

A compendium of the GDPR provisions most relevant for controllers in research

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Compliance with GDPR

— Appropriate organisational and technical measures

Art. 24 Responsibility as a controller

Art. 24.1 • Implement **technical** and **organisational measures** for compliance with GDPR

Art. 24.2 • This includes data protection **policies**

Art. 25 Privacy by design and default

Art. 25.1 • Implement data protection principles such as **pseudonymisation** and **data minimisation**

Art. 25.2 • Ensure that, by default, only data necessary for each specific purpose of the processing are processed

- Amount of data collected (only **data necessary**)
- Extent of data processing (only **necessary processing**)
- Storage period: as **short as possible** (also for parts of data)
- Accessibility: **limit** to people needing **access**

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Additional stakeholders

— Joint / shared processing

Art. 26 Joint controllers

Art. 26.1

- Determine **respective responsibilities** for compliance with GDPR, in particular as regards the exercising of the rights of the data subject

Art. 26.3

- Irrespective of Art. 26.1, the data subject may **exercise** his or her **rights** under this Regulation in respect of and **against each of the controllers**

Art. 28 Processor

Art. 28.1

- Use only processors providing **sufficient guarantees** to implement appropriate technical and organisational measures

Art. 28.3

- Content of **contract** and **mandatory stipulations**(!)

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Obligation as processor – Art. 28

— Processing must be governed by contract

Content

- Subject-matter and duration of the processing, nature and purpose of the processing, type of personal data and categories of data subjects and obligations and rights of the controller.
- Obligations of processor
  - Process the personal data **only on documented instructions** from the controller
  - Ensure authorised persons **committed to confidentiality**
  - Take all (**security**) measures required pursuant to **Article 32**
  - Engage another **(sub-)processor** only with approval of controller
  - Assist the controller in compliance with **data subject requests**
  - Assist controller in **legal obligations** pursuant to Articles 32 to 36
  - **Delete or return** all the personal data after the end of services
  - Allow for and contribute to **audits**

Documentation obligation

— Record keeping following Art. 30.1

Content of processing records

- **Name** and **contact details** of **controller** and, where applicable: joint controller, **representative** and **data protection officer**
- **Purposes** of the processing
- **Categories of data subjects** and **categories of personal data**
- **Categories of recipients** to whom data have been or will be disclosed including recipients in third countries or international organisations
- Transfers of personal data to a **third country** or an **international organisation** (where applicable) **including safeguards**
- Envisaged **time limits** for erasure of different categories of data
- General description of the technical and organisational **security measures**

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Security of processing
— Security measures

Art. 32.1

- Measures **balance** the
  - **Costs** of implementation
  - **Nature**, **scope**, context and purposes of processing
  - Risk of **likelihood** and **severity** for the rights and freedoms of natural person
- Measures **include** among others
  - Pseudonymisation and **encryption**
  - Ability to ensure the ongoing **confidentiality, integrity, availability** and **resilience** of processing systems and services
  - Ability to **restore** the availability and access to personal data in a timely manner in the event of a physical or technical incident
  - Process for **regularly testing**, assessing and evaluating the effectiveness of technical and organisational measures
  - Ensure **compliance of staff**

Security of processing
— Additional requirements

Art. 32.3 • **Assess the appropriate level** of security considering accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

Art. 32.3 • Ensure that **any natural person** acting under the authority of the controller who has access to personal data **does not process them except on instructions from the controller**

Notification of a data breach

— Destruction, loss, alteration, disclosure, access

Art. 33.1

- **Notify supervisory authorities within 72 hours** unless the breach is unlikely to result in a risk to the rights and freedoms of natural persons.

Art. 33.3

- **Content** of notification
  - Nature of the breach,
  - Categories and approximate **numbers of data subjects** concerned
  - Categories and approximate **number of personal data records**
  - **Contact point** where more information can be obtained
  - Where appropriate: **measures** taken

Art. 34.1

- **Notify data subject** if breach is likely to result in a high risk to the rights and freedoms of natural persons

Art. 34.3

- **Exemption** if measures render **data unintelligible** (e.g. encryption), measures taken **remove risk** or **disproportionate effort** (still requires public communication

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Data Protection Impact Assessment (DPIA)

— Risk assessment and corresponding impact

Art. 35.1 • DPIA necessary if processing is likely to result in a **high risk** to the rights and freedoms of natural persons

Art. 35.3 • In particular: if **processing special categories of data** (i.e. health/genetic) on a large scale

Art. 35.7 • **Content** of DPIA

- **Description** and **purpose** of processing,
- Assessment of **necessity** and **proportionality** of processing
- **Assessment of risks** to the rights and freedoms of data subjects
- Measures to **address the risks**, including **safeguards**, security measures and mechanisms to ensure protection of personal data

Art. 36.1 • **Prior consultation of Supervisory Authority** needed if processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk

Recital (94) (**Risk cannot be mitigated** by reasonable means in terms of available technologies and costs of implementation)

Data Protection Officer (DPO)

— A data protection "authority" inside your organisation

Art. 37.1 • A DPO needs to be designated where

- Processing is carried out by a **public body**
- Core activities consist of processing on a large scale of **special categories of data**

Art. 37.6 • DPO may be **staff member** or **external consultant**

Art. 37.7 • **Contact details** for DPO need to be **published**

Art. 39.1 • **Tasks** of the DPO

- Inform and **advise on the obligations** pursuant to the GDPR and to other Union or Member State data protection provisions
- **Monitor compliance** with GDPR, national provisions and institutional policies including assignment of responsibilities, training and audits
- Provide **advice on DPIA** and monitor performance
- **Cooperate with Supervisory Authority** and act as contact point for them

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Practical discussion…

— More practical use cases, tools and solutions…

Next presentation / Niclas Jareborg

- Security measures

AllHands Meeting

- Beacon workshop (Thursday)
- Galaxy workshop (Thursday)

Future ELIXIR Data Protection Working Group

- To be applied for in today's Head of Nodes meeting

Previous events

- Webinar https://www.elixir-europe.org/events/webinar-gdpr
- GDPR Workshop in Brussels Summary

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THANK YOU!

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