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Koščík, Michal
2016

Dostupný z <http://www.nusl.cz/ntk/nusl-261188>

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Datum stažení: 19.09.2024

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General Data Protection Regulation

Impact on the repositories

Michal Koščík

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← → ↻ fortune.com/2016/04/14/eu-parliament-gdpr/

FORTUNE


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TECH DATA PROTECTION

Here Come the World's Toughest Privacy Laws APRIL 14, 2016

by David Meyer APRIL 14, 2016, 9:58 AM EDT

✉ 🐦 📌 🌐




Here's what you need to know about the EU's General Data Protection Regulation.

EU justice commissioner Věra Jourová

Finally, after four years of negotiations and formalities, the European Union will have its tough new privacy rules, replacing two-decades-old legislation that was much more open to interpretation by individual countries.

RECOMMENDED FOR YOU



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As Clinton Expands Into Red States, Trump Again Claims Fraud 9:31 AM EDT

Chinese State Firms Pledge \$1.8 Billion to Fight Poverty 9:12 AM EDT

Deutsche Bank to Pay \$38 Million in U.S. Silver Price-Fixing Case 9:00 AM EDT

Dick's Sporting Goods Reportedly Planning to Bid for Golemsmith's U.S. Stores 4:50 AM EDT

Tesco Grows Its Market Share For the First Time in 5 Years 4:48 AM EDT

United Says Low Airfares and Wage Hikes Will Squeeze Profits 4:36 AM EDT

Danone's Sales Growth Is Hurt By Challenges in China 4:35 AM EDT

Here's Where Wall Street Republicans Are Making Their Political Donations 4:22 AM EDT

This Family Trio Is Set to Be Charged in a Giant Corruption Probe 4:21 AM EDT

China's Richest Man Begins Courting Hollywood Filmmakers 3:28 AM EDT

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This Texas Unicorn Is Ready for a Rare Oil IPO 1:38 AM EDT

IBM Shares Fall Despite Higher-Than-Expected Sales 1:17 AM EDT

Apple Retail Chief Angela Ahrendts on Turning Stores Into Town Squares 1:10 AM EDT

Is there any personal data in grey literature?

Mainly accidental

- Annual reports, contact information,
- Websites and blogs
- Databases
- Poorly anonymized research data
- Diploma theses'
- Photographies
- Biographies,



REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 April 2016

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data,
and repealing Directive 95/46/EC (General Data Protection Regulation)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the 'Charter') and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her.
- (2) The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data. This Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and to the well-being of natural persons.
- (3) Directive 95/46/EC of the European Parliament and of the Council ⁽⁴⁾ seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States.



Rok 2018

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Where is the difference?

Basic pillars of regulation

„Old“ (current) directive

- Broad definition of PD
- Title to process PD
 - Consent
 - Legal entitlement
- Triangle of
 - Data subject
 - Controller
 - Processor

„New“ GDPR

- **Even broader** definition of PD
- Title to process PD
 - Consent
 - Legal entitlement

Triangle of

- Data subject
- Controller
- Processor

Comparison

„Old“ (current) directive

- 32 Articles
- Needs to be adopted by member states

„New“ GDPR

- 99 Articles
- Direct effect





From 1995 to 2016 Data protection needed some
FACELIFTS but did not change that much

Principles

Controller

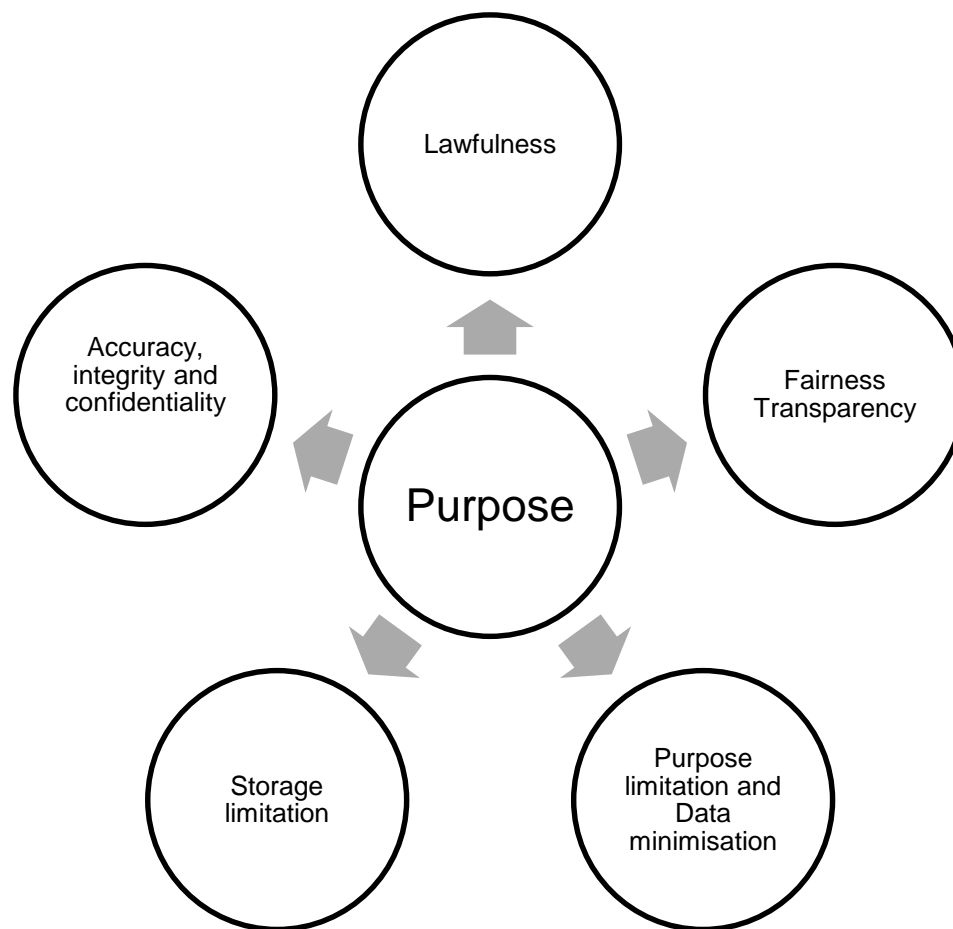
- the person who determines the purpose of data processing

Processor

- performs certain activities on controller's request

Data subject

- Also known as “human”





Processing data without consent

performance of a contract to which the data subject is party

compliance with a legal obligation of a controller

in order to protect the vital interests of the data subject or of another natural person

for the performance of a task carried out in the public interest

the exercise of official authority vested in the controller

legitimate interests pursued by the controller



The principle of storage limitation and exception for archiving in public interest

that personal data must not be 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

Exception

- long term processing “solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes
- public repositories are in general entitled to collect, process, store and make available certain personal information, even if that information was not originally created or collected for the purposes of archiving in a repository

Proportionality!



RIGHT TO OBJECT AND RIGHT TO ERASURE

Right to object and right to erasure (right to be forgotten)

- the controller shall have the obligation to erase personal data on request, if there are no overriding legitimate grounds for the processing, such as
 - exercising the right of freedom of expression and information
 - compliance with a legal obligation
 - reasons of public interest in the area of public health
 - archiving purposes in the public interest, scientific or historical research purposes



Data protection by design

Old concept, newly defined

The liability starts even before processing takes place

form of good practice of the data controller to design its processes and systems in order to minimize the risks of data protection breaches

The GDPR introduces obligation of the controller to implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation

The controller is explicitly required to assess the risks, make plans for the security of the data both at the time of the determination of the means for processing and at the time of the processing itself

Anonymisation, pseudonymisation and profiling

Anonymized

- The key to pseudonyms does not exist

Pseudonymized

- can be de-cyphered and the individual can be tracked and identified
- pseudonymized data is personal data and fall within the scope of the regulation.

Profiling

- automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects



Thank You

Právní rámec sběru, zpracování, uchování a užívání výzkumných dat (GA15-20763S)