



GDPR in short

European legislation related to data standards

1 General Data Protection Regulation

The GDPR applies when **personal data** is **processed** by a **data processor** for a purpose, and a method, defined by the **data controller** (Art. 4, GDPR).

The processing of personal data should be processed *lawfully, fairly and transparent* in relation to the data subject. The data should be collected for specified, explicit and legitimate purposes. The purpose must fall under the **processing grounds** mentioned in the GDPR. The data collected has to comply with **the criteria laid down in Article 52(1)** of the Charter of Fundamental Rights, which includes the **requirement of proportionality and necessity**.

Inaccurate personal data has to be erased or rectified without delay. Stored data has to be kept in a form which permits identification of data subjects for no longer than necessary for the purposes for which the personal data are processed (Art. 5., GDPR). Personal data may solely be stored for longer periods insofar as the personal data will be processed for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.

However, the stored data has to comply with the **principle of storage limitation**. Moreover, safeguards have to be added to ensure the rights and freedoms of the data subject. Those safeguards have to make sure that further processing of the stored data no longer permits the identification of data subjects. Such as measure could be pseudonymization, provided that the purposes and processing ground for archiving can be fulfilled in that manner (Art. 89., GDPR).

The controller has to ensure **integrity and confidentiality** by providing appropriate security of the personal data, including protection against unauthorized or unlawful processing, and additionally against accidental loss, destruction or damage, by using appropriate technical or organizational measures (Art. 5., GDPR). The obligation of the controller could be assured by **codes of conduct** and **data protection by design**.

All in all, the main principles that should be complied with are **purpose limitation, data minimization, storage limitation, integrity and confidentiality** (Art. 5., GDPR).

The GDPR does not prohibit organizations to process personal data. It merely emphasizes that when personal data is used, the requirements mentioned above must be met. Moreover, the GDPR stimulates the use of data for research and development of technical solutions in the service of the public good. Furthermore, the European Commission encourages Member states to develop Intelligent Transport Systems (ITS) and recognizes mobility data and digital maps as fundamental (Directive 2010/40/EU). In the Commission Delegated Regulation (EU) 2017 substantiates this attitude by enabling the collection of both static and dynamic data, such as individual trips, for this purpose. The 'Open Data Directive' in 2019 deems mobility data as having a 'high value' and encourages the free reuse and open data strategy (Sas, Paris, & Bo, 2020).

2 Elaboration definitions and concepts

Personal data is any information relating to identifiable natural person. This natural person could be identified directly or indirectly by identifiers such as a name, an identification number, location data, an online identifier or other factors revealing the physical, psychological, genetic, mental, economic, cultural, or social identity of that natural person.

Data processing is defined as any operation or set of operations which are performed on personal data, such as collection, organization, structuring, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment, or combination, restriction, erasure or destruction.

The **data processor** is a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

The **data controller** is the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data (Art. 4., GDPR). The controller is responsible for the lawful and GDPR compliant way of processing of personal data. Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller shall implement appropriate technical and organizational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation.

Those measures shall be reviewed and updated where necessary. Adherence to approved **codes of conduct** as referred to in Article 40 or approved certification mechanisms as referred to in Article 42 may be used as an element by which to demonstrate compliance with the obligations of the controller.

Another way to do so is by assuring **data protection by design** by measures such as pseudonymization, which are designed to implement data-protection principles, as **data minimization** and **storage limitation**, to integrate the necessary safeguards for protecting the rights of the data subjects (Art. 25., GDPR).

Processing grounds for retrieval and processing of personal data are:

The processing ground does not take effect until the data subject has given consent to the processing of his or her personal data.

- 1) consent of data subject.
- 2) 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;
- 3) processing is necessary for compliance with a legal obligation to which the controller is subject;
- 4) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- 5) 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;
- 6) 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.

Point (5) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks (Art. 6., GDPR).

Data protection is a fundamental right (Art. 8., CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION). **Necessity** is fundamental principle when assessing a possible limitation of this fundamental right. The processing and storing operations must be strictly necessary. Moreover, it should be the least intrusive way to achieve a specific goal. Necessity shall be justified on the basis of objective evidence and is the first step before assessing the proportionality of the limitation ("Necessity & Proportionality | European Data Protection Supervisor," n.d.). Necessity is one of the aspects that defines the **lawfulness** of the processing of personal data.

To be lawful, any limitation on the exercise of the fundamental rights protected by the Charter must comply with the following **criteria, laid down in Article 52(1)** of the Charter: (European Data Protection Supervisor, 2017)

- 1) it must be provided for by law,
- 2) it must respect the essence of the rights,
- 3) it must genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others,
- 4) it must be **necessary**,
- 5) it must be **proportional** (European Data Protection Supervisor, 2017).

Furthermore, for data processing to be **lawful** the principles of the GDPR described in Article 5 must be adhered to. These principles are: ("Art. 5 GDPR - Principles relating to processing of personal data - GDPR.eu," n.d.)

- 1) Purpose limitation
- 2) Data minimization
- 3) Storage limitation
- 4) Integrity and confidentiality.

Thus, to be lawful, data processing must adhere to the principles of the GDPR, be mentioned in law, respect the essence of rights, should fall under general interests and must be necessary and proportional. The latter is referred to as the **requirements of necessity and proportionality**.

Proportionality describes the balance between the means used and the intended aim. In the context of fundamental rights proportionality is key for any limitation on these rights ("Necessity & Proportionality | European Data Protection Supervisor," n.d.).

More specifically, proportionality requires that advantages due to limiting the right of data protection are not outweighed by the disadvantages experienced by the data subject. In other words, the limitation on the right of data protection must be justified. This could be done by providing safeguards; measures that can support the justification of the limitation.

When assessing the requirements of **necessity and proportionality** of the processing of personal data, proportionality requires that only that personal data which is adequate and relevant for the purposes of the processing is collected and processed, this is called the **principle of data minimization** (Art. 5., GDPR).

To assess the necessity and proportionality of the 'Standard' and 'Agreement' of CDS-M, the necessity and proportionality test van be used designed by the European Data Protection Supervisor body. ("Necessity & Proportionality | European Data Protection Supervisor," n.d.).

References

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