

## EU General Data Protection Regulation: Harmonization Limits, Further Implementation and Standardization (19 April 2016)

Member States have margin to act	Commission has implementing powers	EDPB (European Data Protection Board) or DPAs have interpretation powers
<p><a href="#"><u>Art. 6 2 Processing for legal requirement or in public interest or exercise of official authority.</u></a></p> <p>Specify provisions and application of these two grounds for lawful processing.</p>	<p><a href="#"><u>Art 12 8 Icons (transparency) to the data subject.</u></a></p> <p>Determine the information to be presented by the icons (transparency) and the procedures for providing standardized icons.</p>	<p><a href="#"><u>Art 26 3c Processing contracts.</u></a></p> <p>DPA can lay down standard contractual clauses for data processing agreement.</p>
<p><a href="#"><u>Article 8 Age of children in information society services.</u></a></p> <p>Set the age of children below 16 (and not lower than 13) for required parental consent.</p>	<p><a href="#"><u>Art 26 3 b Controller-processor contracts.</u></a></p> <p>Lay down standard contractual clauses for controller-processor and sub-processor agreements.</p>	<p><a href="#"><u>Art 35 3 a Data protection impact assessment.</u></a></p> <p>DPA shall issue a list of processing requiring a data protection impact assessments (DPIA).</p>
<p><a href="#"><u>Art 9 2(a) Processing of sensitive data.</u></a></p> <p>Specify cases where consent is not a valid ground for processing sensitive data.</p> <p><a href="#"><u>Art 9 2(g)</u></a></p> <p>Specify the safeguards for processing of sensitive data in substantial public interest.</p> <p><a href="#"><u>Art 9 4.</u></a></p> <p>Introduce further conditions for the processing of genetic or health data.</p>	<p><a href="#"><u>Art 40 9 Codes of conduct.</u></a></p> <p>Decide on general validity of the approved codes of conduct throughout the EU.</p>	<p><a href="#"><u>Art 36 4 Prior consultation by MS.</u></a></p> <p>DPA must be consulted before passing any laws regarding data protection.</p>

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<p><a href="#"><u>Art 10 Processing of data relating to criminal convictions and offences</u></a></p> <p>Authorise processing of personal data relating to criminal convictions and offences or related security measures.</p>		
<p><a href="#"><u>Art 20 2 (b) Profiling.</u></a></p> <p>Authorize automated decision taking, including profiling, under specific circumstances.</p>	<p><a href="#"><u>Art 43 8. Certification body and procedure.</u></a></p> <p>Adopt delegated acts for specifying the requirements of certification mechanisms.</p>	<p><a href="#"><u>Art 40 7 Codes of conduct.</u></a></p> <p>EDPB must give its opinion on a draft code of conduct related to processing of activities in several MS.</p>
<p><a href="#"><u>Art 23 Restrictions.</u></a></p> <p>Restrict individuals' rights and duty to notify individual of breaches for purposes of national security, defense, public security, prevention/ detection / prosecution of criminal offences, public interest etc. purposes.</p>	<p><a href="#"><u>Art 43 9. Certifications and seals</u></a></p> <p>Lay down technical standards for certification mechanisms and seals.</p>	<p><a href="#"><u>Art 41 3 Monitoring of approved codes of conducts.</u></a></p> <p>DPA shall submit draft criteria for accreditation of bodies monitoring compliance with a code of conduct.</p>
<p><a href="#"><u>Art 26 1 Joint controllers.</u></a></p> <p>Determine the respective responsibilities of the joint controllers.</p>	<p><a href="#"><u>Art 45 Transfers with an adequacy decision.</u></a></p> <p>Decide that a country ensures adequate level protection.</p>	<p><a href="#"><u>Art 64 1 Opinion of the Board.</u></a></p> <p>EDPB shall issue an opinion whenever a competent DPA intends to adopt the decision on</p> <ul style="list-style-type: none"> <li>- list of processing subject to DPIA</li> <li>- whether a code of conduct is compliant with the Regulation,</li> <li>- determining a standard contractual clause,</li> <li>- authorizing contractual clauses,</li> </ul>

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		<ul style="list-style-type: none"> <li>- approving Binding Corporate Rules (“BCR”).</li> </ul>
<p><a href="#"><u>Article 26 3(a) (g) Processor obligations.</u></a></p> <p>Provide legal authority for a processor to process data beyond controller’s instructions</p> <p>Authorise data retention even if contrary to a contractual agreement.</p>	<p><a href="#"><u>Art 47 3. Transfers by way of binding corporate rules.</u></a></p> <p>Specify the format and procedures for the exchange of information between controllers, processors and supervisory authorities for BCR</p>	<p><a href="#"><u>Art 65 Dispute resolution by the EDPB.</u></a></p> <p>In order to ensure the correct and consistent application of the Regulation in individual cases, the EDPB shall adopt a binding decision on conflictual interpretations between DPAs.</p>
<p><a href="#"><u>Art 36 5 Prior consultation.</u></a></p> <p>Require controller to consult with and obtain prior authorisation from DPA where processing is based on public interest ground.</p>	<p><a href="#"><u>Art 61 9. Mutual assistance of DPAs.</u></a></p> <p>Specify the format and procedures for mutual assistance of DPAs and the arrangements for the exchange of information by electronic means between DPAs and between DPAs and the EDPB. .</p>	<p><a href="#"><u>Art 66 Urgency procedure.</u></a></p> <p>DPA can adopt provisional measures for three months in exceptional circumstances to protect rights and freedoms of individuals.</p>
<p><a href="#"><u>Art 37 4. Designation of DPO</u></a></p> <p>May require designation of a DPO</p>	<p><a href="#"><u>Art 67 Exchange of information.</u></a></p> <p>Adopt implementing acts of general scope for specifying the arrangements for the electronic exchange of information between DPAs/EDPB.</p>	<p><a href="#"><u>Art 70 EDPB advises the Commission.</u></a></p> <p>EDPB can advise the Commission on:</p> <ul style="list-style-type: none"> <li>- any issue of DP and amendment to Regulation,</li> <li>- on format and procedures for exchange of information</li> </ul>
<p><a href="#"><u>Art 49 5 Cross-border data transfer derogations.</u></a></p> <p>May, for important reasons of public interest, limit transfer of certain categories of personal data to a third country.</p>		<p><a href="#"><u>Art 70 EDPB issues opinions</u></a></p> <p>EDPB can issue opinions on:</p> <ul style="list-style-type: none"> <li>- draft decisions of DPAs pursuant to the consistency mechanism,</li> <li>- codes of conduct drawn up at EU level,</li> </ul>

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		<ul style="list-style-type: none"> <li>- the assessment of the third country's "adequacy"</li> <li>- the icons for providing information to individuals</li> </ul>
<p><a href="#"><u>Art 83 7 Conditions for imposing administrative fines.</u></a></p> <p>Provide rules for application of administrative fines to public authorities/bodies.</p> <p><a href="#"><u>Art 84 Penalties.</u></a></p> <p>Lay down the rules on penalties for infringements of the Regulation.</p>		<p><a href="#"><u>Art 70 EDPB issues guidelines, recommendations and best practices</u></a></p> <p>EDPB can issue guidelines, recommendations and best practices on</p> <ul style="list-style-type: none"> <li>- procedures for deleting links/copies of personal data from publicly available communication services,</li> <li>- conditions for profiling decision,</li> <li>- data breach notification and the undue delay,</li> <li>- the high risk for rights and freedoms of the individuals in a data breach,</li> <li>- the criteria and requirements of transfers based on BCR,</li> <li>- application of enforcement powers of DPAs and fixing the administrative fines.</li> </ul>
<p><a href="#"><u>Art 85 Freedom of expression and information.</u></a></p> <p>Provide exemptions from Regulation for processing of personal data for journalistic purposes, academic artistic or literary expression purposes.</p>		

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<p><u><a href="#">Art 87 National identification number.</a></u></p> <p>Further determine specific conditions for the processing of national identification numbers.</p>		
<p><u><a href="#">Art 88 Employment context.</a></u></p> <p>Provide, by law or collective agreements, more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in employment context, including any basis for consent.</p>		
<p><u><a href="#">Art 89 1 and 2 Historical purposes.</a></u></p> <p>Lay down safeguards for processing of personal data for historical purposes, or for archiving purposes in the public interest and any derogations from individuals' rights.</p>		
<p><u><a href="#">Art 89 2 Scientific or statistical purposes.</a></u></p> <p>Provide for derogations from individuals' rights, subject to safeguards, where personal data are processed for scientific or statistical purposes.</p>		
<p><u><a href="#">Art 90 Obligation of secrecy.</a></u></p> <p>Adopt specific rules for the DPA's powers where necessary and proportionate to reconcile the right of the data protection with the obligation of professional or other secrecy.</p>		