



Grounds for processing data in the implementation of Erasmus+ : from compliance to ethics

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Introduction

- **Almost 80% of the Erasmus+ programme** is implemented in **indirect management by National Agencies**, meaning that the European Commission **entrusts budget implementation tasks** to these entities.
- **All EU Member States and third countries associated to the programme have appointed one or more National Agencies.** These National Agencies promote and implement the programme at national level and act as the link between the European Commission and participating organisations at local, regional and national levels.
- Some of these National Agencies also implement the **European Solidarity Corps** programme.
- The following slides provide a **description of programme implementation in indirect management** in the context of Erasmus+ and, if applicable, the European Solidarity Corps.

The elephant in the room?

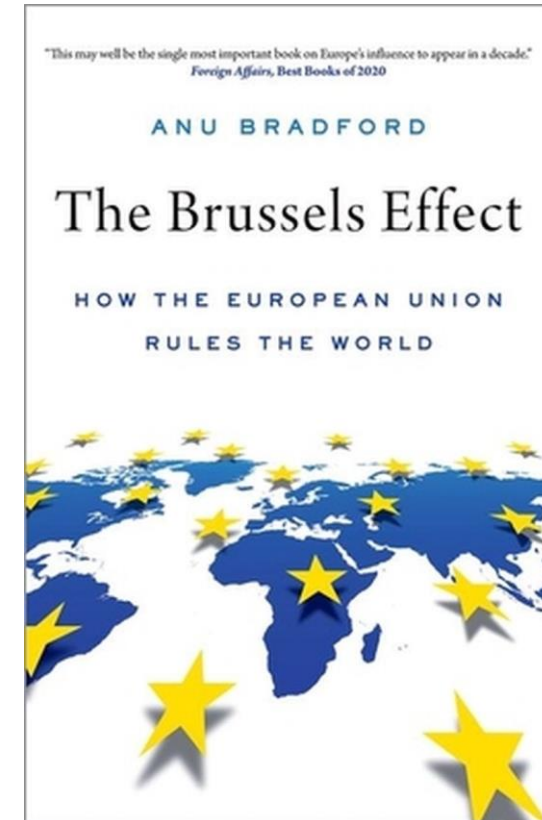


Data protection and ethics ? Or data protection and compliance?

- First and foremost a question of compliance
- Three approaches to privacy and data protection (US, EU, CN)
- In Europe, a constitutional right

Why data protection? A constitutional right

- Art. 8 ECHR (private life)
- Art. 7 CFR (respect for family and private life)
- Art. 8 CFR (protection of personal data)
- Art. 16 TEU (protection of personal data)
- GDPR
- USA: First Amendment, no equivalent for privacy



Values protected via legally binding requirements

- Europe as a pioneer (Spiros Simitis)
- 1970 Hessen, 1973 Sweden, 1977 Germany, 1978 France
- 1981 CoE Convention 108
- Directive 95/45/EC
- 2016 (2018) GDPR and IDPR
- Non-negotiable
- GDPR = Reg. (EU) 2016/679 => All sectors except law enforcement
- IDPR (EUDPR) = Reg. (EU) 1725/2016 => EU Institutions, agencies and bodies (incl. processors)
- Directive (EU) 2016/680 => Member States' law enforcement authorities
- Independent national authorities
- EDPS, EDPB

**What are
these
rights
worth in
practice?**



Data protection principles

	GDPR	IDPR
'lawfulness, fairness and transparency'	Art. 5(1)(a) GDPR	Art. 4(1)(a) IDPR
'purpose limitation'	Art. 5(1)(b) GDPR	Art. 4(1)(b) IDPR
'data minimisation'	Art. 5(1)(c) GDPR	Art. 4(1)(c) IDPR
'accuracy'	Art. 5(1)(d) GDPR	Art. 4(1)(d) IDPR

Data protection principles

	GDPR	IDPR
'storage limitation'	Art. 5(1)(e) GDPR	Art. 4(1)(e) IDPR
'integrity and confidentiality'	Art. 5(1)(e) GDPR	Art. 4(1)(f) IDPR
'accountability'	Art. 5(2) GDPR	Art. 4(2) IDPR

**What do
they
mean for
NA staff?**



Grounds for processing

	GDPR	IDPR
'consent of the data subject'	Art. 6(1)(a) GDPR	Art. 5(1)(d) IDPR
'performance of a contract by the data controller'	Art. 6(1)(b) GDPR	Art. 5(1)(c) IDPR
'compliance with a legal obligation by the data controller'	Art. 6(1)(c) GDPR	Art. 5(1)(b) IDPR

Grounds for processing

	GDPR	IDPR
'protection of vital interests of the data subject'	Art. 6(1)(d) GDPR	Art. 5(1)(e) IDPR
'exercise of public interest or official authority by the data controller'	Art. 6(1)(e) GDPR	Art. 5(1)(a) IDPR
'compliance with a legal obligation of the data controller'	Art. 6(1)(f) GDPR	Art. 5(1)(b) IDPR



But whose are these rights?

Data subjects' rights

	GDPR	IDPR
'information'	Art. 13-14 GDPR	Art. <u>15-16</u> IDPR
'access'	Art. 15 GDPR	Art. <u>17</u> IDPR
'rectification'	Art. 16 GDPR	Art. <u>18</u> IDPR
'erasure' ('RTBF')	Art. 17 GDPR	Art. <u>19</u> IDPR

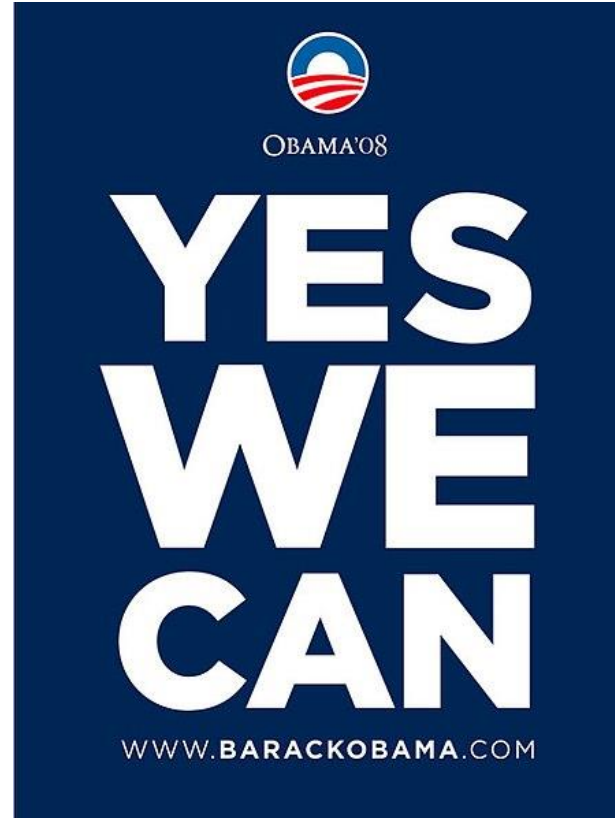
Data subjects' rights

	GDPR	IDPR
'restriction'	Art. 18-19 GDPR	Art. <u>20-21</u> IDPR
'data portability'	Art. 20 GDPR	Art. <u>22</u> IDPR
'objection to automated decision-making'	Art. 21-22 GDPR	Art. <u>23-24</u> IDPR

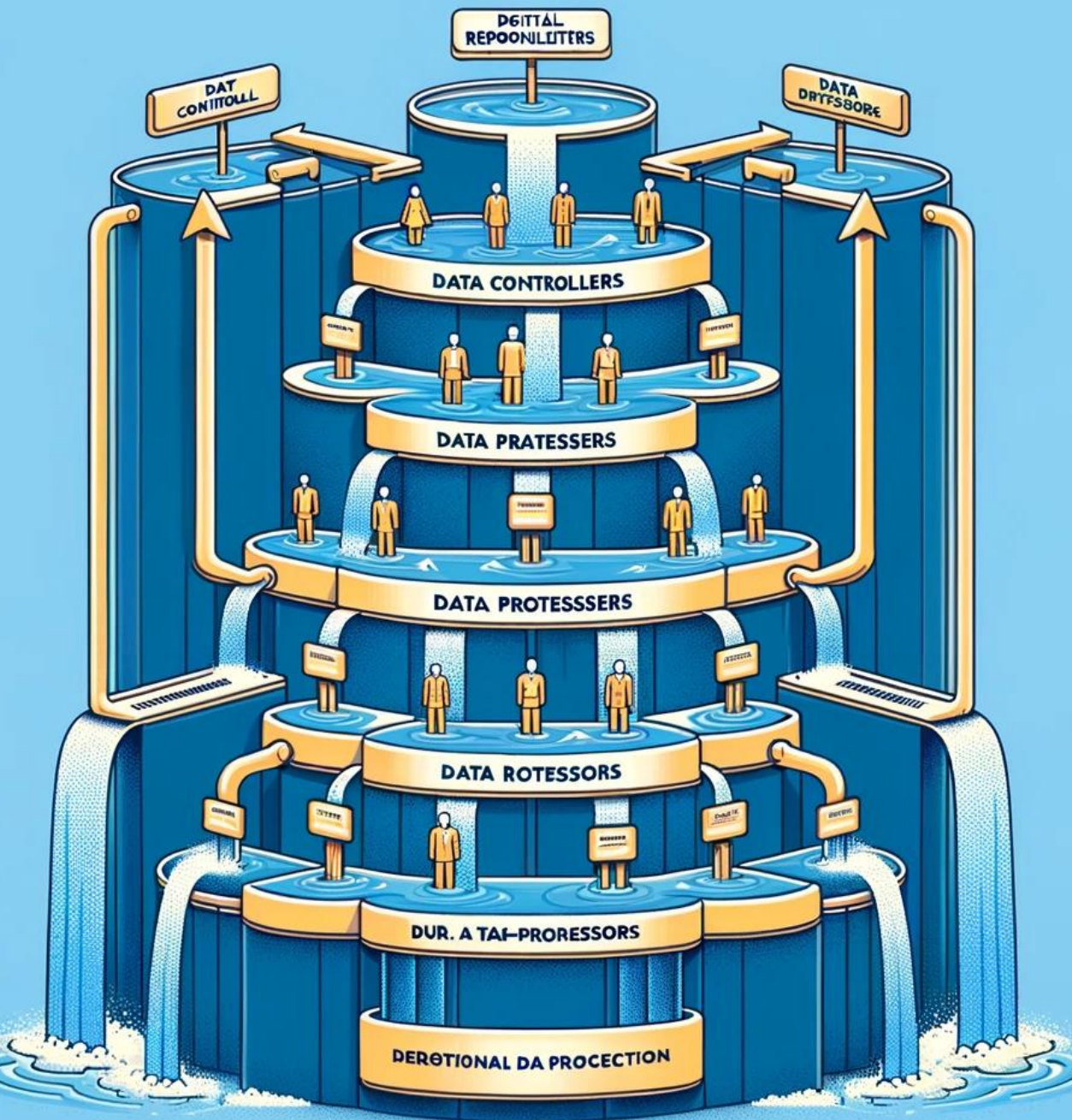


Can data subjects
sue?

Schrems I (2015), Schrems II (2020)



Data Protection
Commission in
Ireland



Cascade of responsibilities

- controller = European Commission, DG EAC, unit B.4 – Erasmus+ Coordination
- processors (Art. 29) = National Agencies, contribution agreement
- (sub)processors (Art. 29) = Erasmus+ beneficiaries, grant agreement

Erasmus+ (2021-2027) in numbers

- 3.1 millions of data subjects as participants (students, teachers, etc),
- 350k “fewer opportunities” (processing of health data)
- Over 500k organisations = 1 contact person (at least), 1 legal representative
- 9k experts assessing applications
- Over 3k staff of National Agencies in 56 National Agencies

Erasmus+ (2021-2027) in numbers

- 6 main processing activities (authentication, registration, submission, management, communication, evaluation)
- 6 categories of data subjects
- Data retention – from 6 months to 10 years
- 1k emails to data controller from data subjects per year (Chapter III – access, rectification, erasure, restriction, objection)

What about requests from police, prosecutors, etc.?



National Authorities requests

In case when ‘competent authority’ (any public authority in a Member State competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, Art.3(11) of Regulation (EU) 2018/1725) requests access to personal data processed under the “Erasmus+ and European Solidarity Corps decentralised actions managed by the National Agencies” processing activity, the authority directly or indirectly via the National Agency shall relay this request to the Commission without delay.

National Authorities requests

Legal basis (i) data protection rules

- Art.3(13) Reg. 2018/1725 : “(...) the processing of [those] data by [those] public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing”
- Art.26 Reg. 2018/1725 : “the controller shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation” – cf. Art.5 - lawfulness, specified, explicit and legitimate purposes, adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed

National Authorities requests

Legal basis (ii) immunity rules

Article 3(4) TEU:

- “Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.
- The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.
- The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.”

National Authorities requests

Legal basis (ii) immunity rules

Protocol of Immunities

- Article 1: “The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation.(...)”
- Article 2: “The archives of the Union shall be inviolable.”
- Article 19 Staff Regulation requires an official to receive authorisation from the appointment authority to disclose information he has knowledge by reason of his or her duties.

What about transfers to third countries?





Not all third countries are equal

EEA countries:

- Iceland,
- Liechtenstein,
- Norway

Countries with an adequacy decision:

Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland, UK (GDPR, LED), USA (commercial organisations, EU-US Data Privacy Framework), Uruguay

Transfers to third countries

	GDPR	IDPR
Transfers to third countries and international organisations	Chapter V GDPR	Chapter V IDPR
General principles	Art. 44 GDPR	Art. <u>46</u> IDPR
Transfers on the basis of an adequacy decision	Art. 45 GDPR	Art. <u>47</u> IDPR
Transfers subject to appropriate safeguards	Art. 46 GDPR	Art. <u>48</u> IDPR

Transfers to third countries

	GDPR	IDPR
Binding corporate rules	Art. 47 GDPR	<u>N/A</u>
Transfers or disclosures not authorised by Union law	Art. 48 GDPR	Art. <u>49</u> IDPR
Derogations for specific situations	Art. 49 GDPR	Art. <u>50</u> IDPR
International cooperation for the protection of personal data	Art. 50 GDPR	Art. <u>51</u> IDPR



Challenges in Erasmus+

- Number of processors
- Knowledge of the rules by all actors
- Habits
- Legal basis (Article 5(1)(a) = public interest)



I want you ...

To Demonstrate Lawfulness !

(with AI misspelings)

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Thank you



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