

GENERAL DATA PROTECTION REGULATION (GDPR) AND DISTANCE LEARNING

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***Abstract:** The main goal of the paper is to give the basic information about the General Data Protection Regulation (GDPR) and its possible influence on distance learning and e-learning. The first part of the text is focused on the GDPR content and importance. Next, the author's point of view on the GDPR consequences for ~~into~~ the distance learning and e-learning is formulated. There can be found a few complicated problems which could be solved by using different approaches which are based on specific culture context. The text could serve as a starting point for the discussion of the conference participants and future readers.*

Keywords: data protection, distance learning, e-learning, GDPR, study environment.

INTRODUCTION

The Czech Republic and other European Union (EU) countries have to prepare their data protection due to the new requirements arising from the General Data Protection Regulation (GDPR). The GDPR is an EU regulation designed to strengthen and unify data protection within the EU. The GDPR will come into effect on 25 May 2018 and will affect every organisation that processes EU residents' personally identifiable information. GDPR has been designed not only to harmonize data protection practices, but specifically to strengthen the rights of data subjects.

The GDPR eases the flow of data between all the EU member states. Anyone who processes information about EU nationals will need to prepare for compliance. It is expected that the GDPR will supersede the Data Protection Act (DPA) 1998 in the U.K.

For example: organisations need to be able to demonstrate compliance with the Regulation in a way not previously required, the standards required for gaining consent to process personal data are much higher, organisations will be required to

report significant data breaches to the Information Commissioner's Office within 72 hours, and the potential penalties for non-compliance are significantly higher than they are currently (potentially amounting to a 20 million Euro fine).

Later in the text the author tries to specify a few aspects which could be interesting for the contemporary education institutions.

1. GDPR – BASIC TERMS AND PRINCIPLES

The Article 4 of the GDPR (http://ec.europa.eu/justice/data-protection/reform/files/regulation_oj_en.pdf) contains 26 definitions, such as personal data, processing, restriction of processing, profiling, pseudonymisation, filing system, controller, processor, recipient, third party, consent, personal data breach, genetic data, biometric data, data concerning health, main establishment, representative, enterprise, group of undertaking, binding corporate rules, supervisory authority, supervisory authority concerned, cross-border processing, relevant and reasoned objection, information society service, and international organisation.

Personal data means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Processing means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

Controller means 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; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.

Processor means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

Consent of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;

The Article 5 specifies the principles relating to processing of personal data. These are:

- lawfulness, fairness and transparency;
- purpose limitation;
- data minimisation;
- accuracy;
- storage limitation;
- integrity and confidentiality;
- accountability.

These principles mean that personal data shall be:

- processed lawfully, fairly and in a transparent manner in relation to the data subject;
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes;
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- 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; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of the data subject;
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

The controller shall be responsible for, and be able to demonstrate, compliance with the principles.

2. GDPR FROM THE EDUCATION POINT OF VIEW

The GDPR can significantly affect especially the distance learning which uses modern technologies where collecting and using personal data have become a common practise. Firstly, the students of all age groups should be aware of possible abuse of data collections which are connected with their distance learning. Secondly, GDPR implementation into study and learning processes should be evident and clear for all participants. Thirdly, the permanent discussion on suitable practises in the field should be the basis for the building a study environment where the power is functionally distributed and the valid law regulation is respected. The controller, the processor should be strictly defined and students' consent should be always made in a suitable written form.

2.1 Permanent discussion of the topic

Firstly, seminars and conferences tailored towards education professionals should be required. Right there is a place to explore the subject in detail. Experts from education, law and technology should clearly explain how educational institutions need to change their data policy, provide best practice examples (lessons learned from GDPR projects) in understandable form for the participants, and moderate discussions on key problems. An important topic for the universities is the impact of GDPR in research. Outcomes description should immediately be available in electronic form for the education community.

2.2 Data Subjects and their Rights

The GDPR covers more detailed rights for data subjects – the students of all age groups. These can be sorted as follows.

2.2.1 Data Subject Access and Rectification Rights, Right to Object

The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:

- the purposes of processing;
- categories of recipients;
- retention periods;
- rectification right;
- the right to lodge a complaint with a supervisory authority;
- data source;

- the existence of automated decision-making including profiling;
- third country transfers.

The controller shall provide a copy of the personal data undergoing processing.

2.2.2 Right to Obtain Restriction of Processing

The data subject shall have the right to obtain from the controller restriction of processing in some specific cases.

2.2.3 Right to Erasure (Right to Be Forgotten)

The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where e.g. the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed, the data subject withdraws consent on which the processing is based, the personal data have been unlawfully processed, the personal data have to be erased for compliance with a legal obligation.

2.2.4 Data Portability Rights

It means a right to receive the personal data, which the data subject has provided (via online forms, data generated by and collected from the activities of users) to controller, and to transmit those data to another controller if processing is based on consent or execution of a contract with data subject.

2.2.5 Rights Pertaining to Automated Decision-Making and Profiling

It means a right not to be subject to a decision based solely on automated processing, including profiling, if that decision produces legal effects concerning that data subject or similarly significantly affects him. Profiling stands for the recording and analysis of a person's psychological and behavioural characteristics, so as to assess or predict their capabilities in a certain sphere or to assist in identifying a particular subgroup of people.

2.3 Study Data and Transparency

The principle of transparency requires that any information addressed to the public or to the data subject have to be concise, easily accessible and easy to understand. If suitable, visualisation should be used. Such information could be provided in electronic form, for example, when addressed to the public, through a website. This is of particular relevance in situations where the proliferation of actors and the technological complexity of practice make it difficult for the data subject to know and understand whether, by whom and for what purpose personal data relating to him or her are being collected.

2.4 Introduction to GDPR Implementation

The key questions which should be answered at the starting point of the GDPR implementation at an educational institution are:

- What data is collected?
- Who is receiving it?
- What processing will be done?
- How long will it be stored?
- Who will it be shared with?

The educational institutions should keep in mind that no processing without prior data subject consent is possible. Data subject consent should always be expressed in explicit action and documented provable format. All activities should be governed by work contracts, student policies, and research policies.

3. THE MAIN CURRENT TASKS FOR EDUCATIONAL INSTITUTIONS

The following list of data protection aspect can serve as a useful starting point for the necessary activities inside the educational institutions which is based on Harrison's Clark Rickerby's approach. (<https://www.hcrlaw.com/preparing-general-data-protection-regulation-gdpr-10-steps-schools/>)

3.1 Raise Awareness

Make people in your educational institution aware that legislation (e.g. the Data Protection Act (DPA) in the U.K.), is changing to the GDPR and how it will affect educational institutions. This task should be solved at the national level and educational institutions should be supported by the Ministry of Education according to their individual needs.

3.2 Information You Hold

Audit the information you currently hold and what data processing policies are currently in place. Nowadays, a great deal of unnecessary information is held in many cases and not all current data processing is done in compliance with the GDPR.

3.3 Privacy, Data Subjects' Rights and Consent

Review your current privacy agreement and put a plan in place for any changes that are necessary. Remember that privacy is an important aspect of education. Check your current privacy policies to ensure your procedures cover all the rights data subjects have. Pay attention to how you delete personal data.

Review how you are seeking, obtaining and recording consent for data processing and whether any changes are needed. Pay attention to Learning Management Systems which often store sensitive information without data subjects' consent. Remember that keeping a permanent (electronic) communication with data subjects

can give a useful significant feedback due to their feelings connected with the GDPR implementation in an educational institution.

3.4 Students and Personal Data Breaches

Think about what systems you're going to put in place to verify the age of individuals and to gather consent from parents or guardians in regards to data processing.

Make sure you have the correct procedures in place to investigate and report a personal data breach. Sensitive information about a personal data breach is connected with a necessary trust of data subjects.

3.5 Data Protection Officers, Data Processors and e-Safety Policy

Designate a Data Protection Officer (DPO) to take responsibility for data protection compliance and assess. The educational institutions must have an appropriate responsible person who is publicly known and respected.

Choose an accredited Data Processor who is also compliant with GDPR obligations and IT asset disposal. Data Processors should be well known for all participants of educational activities.

Having an e-safety policy in place is vital to ensure all key stakeholders know what needs to be done to remain compliant. Underestimation of an e-safety policy can destroy a reputation of an educational institution.

CONCLUSION

The GDPR introduces a framework of new data protection rights for EU citizens. It will have a huge impact on education. Especially providers of distance education should be carefully prepared. Non-compliant educational institutions could be fined as much as €20 million or 4 % of global annual turnover. Educational institutions need to act now to ensure they are compliant by the time the regulation is introduced.

Educational institutions should especially focus their attention at these problem areas:

- Competent staff, sufficient security mechanisms, informed data subjects;
- Minimize data collection;
- Contract with data management;
- Data subject consent management;
- Transparency.

If any assistance with preparing for the GDPR is required, responsible authorities should act in time. Educational institutions could ask staff data protection training, school data protection officer specific training, data protection legal advice, etc.

The main methods of the proper GDPR implementation should be a cooperation of competent and responsible people, communication inside the educational institutions, their communication with data subjects and a permanent respect to the GDPR. The educational institutions should collect a useful feedback from data subjects, inform them in time and update the GDPR implementation if necessary.

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