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FinTech, Big Data and the **GDPR**

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European Parliament on FinTech and Big Data

- **European Parliament (17 May 2017):**
FinTech: the influence of technology on the future of the financial sector
- 22. Recalls that the **collection and analysis of data play a central role for FinTech**, and therefore stresses the need for **consistent, technology-neutral application of existing data legislation, including the General Data Protection Regulation (GDPR)**, [and other legislative texts] ... stresses that in order to scale up innovative finance in Europe **a free flow of data within the Union** is needed; calls on the Commission to **take measures to ensure that only objective and relevant data elements are used in the context of the provision of financial services**; ...

European Parliament
2014-2019



TEXTS ADOPTED
Provisional edition

P8_TA-PROV(2017)0211

FinTech: the influence of technology on the future of the financial sector

European Parliament resolution of 17 May 2017 on FinTech: the influence of technology on the future of the financial sector (2016/2243(INI))

The European Parliament,

- having regard to its resolution of 26 May 2016 on virtual currencies¹,
- having regard to its resolution of 15 September 2016 on access to finance for SMEs and increasing the diversity of SME funding in a Capital Markets Union²,
- having regard to its resolution of 22 November 2016 on the Green Paper on Retail Financial Services³,
- having regard to the Commission communication of 14 September 2016 entitled ‘Capital Markets Union – Accelerating Reform’ (COM(2016)0601),
- having regard to the Commission staff working document of 3 May 2016 on crowdfunding in the EU Capital Markets Union (SWD(2016)0154),
- having regard to the Commission’s public consultation paper of 10 January 2017 on ‘Building a European data economy’ (COM(2017)0009),
- having regard to the European Supervisory Authorities’ report of 16 December 2016 on automation in financial advice,
- having regard to the European Supervisory Authorities’ discussion paper of 19 December 2016 on the use of Big Data by financial institutions (JC 2016 86),
- having regard to the European Banking Authority’s opinion of 26 February 2015 on lending-based crowdfunding (EBA/Op/2015/03),
- having regard to the European Banking Authority’s discussion paper of 4 May 2016 on innovative uses of consumer data by financial institutions (EBA/DP/2016/01),

¹ Texts adopted, P8_TA(2016)0228.

² Texts adopted, P8_TA(2016)0358.

³ Texts adopted, P8_TA(2016)0434.

European Parliament on FinTech and Big Data

- 23. Emphasises the need for clear rules on data ownership, access and transfer; ... stresses that the **GDPR provides a clear legal framework on personal data** but that more legal certainty is needed regarding other categories of data; ...
- consider: only a resolution
 - non-binding text, but calling for action to Commission
 - Proposal of the Commission for a Regulation concerning non-personal data out on Sept. 13th 2017

European Parliament
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The GDPR as the new benchmark for personal data

- **GDPR = General Data Protection Regulation (Regulation(EU) 2016/679)**

- new data protection law for the EU
 - builds on existing Directive 95/46/EC
 - “pre-Internet”, “pre-Big Data”, “pre-AI in data processing”, “pre-Big Analytics”, “pre-the new IT giants / GAFA from US”

- new rights and obligations for **data subjects (DS)**
 - = generally enhanced position of increased (self-) control
- new rights and (mainly) obligations for **data controllers (DC)** and **data processors (DP)**



- in force already, directly applicable in all EU Member States from 25 May 2018
- currently period of “adaptation” (as no direct implementation needed) of existing Member State Data Protection Laws

Controllers and processors under the GDPR

- enhanced responsibility due to the new **accountability** principle

- intensified and new obligations
 - enhanced **transparency** and **documentation** obligations
 - enhanced **security** obligations

 - Prior data protection impact assessment (**DPIA**)
 - data protection **by design** and **by default**

 - data protection **officers** (**DPO**)
 - data breach **notifications**

- no legal definition of Big Data!
- **in terms of data protection**, Big Data encompasses the analysis of the data using software to extract new and predictive knowledge for decision-making purposes regarding individuals and groups

Big Data = **Big Data** and **Big Data analytics**

(Council of Europe, Guidelines on the Protection of Individuals with regard to the processing of personal data in a world of Big Data, 23 January 2017)

GDPR scope in the context of Big Data

- GDPR applies to **personal** data
 - Art. 4 (1) ‘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
 - **pseudonymised data** also fall within the scope of the GDPR
 - only **anonymised** data are completely excluded from its scope
- Big Data: not all data are personal
 - e.g.: data generated by sensors for monitoring natural or atmospheric phenomena like the weather or pollution, or for monitoring technical aspects of manufacturing processes, may not relate to ‘an identified or identifiable natural person’
- but **risk of re-identification**
 - it is increasingly easy to infer a person’s identity by combining allegedly ‘anonymous’ data with publicly available information

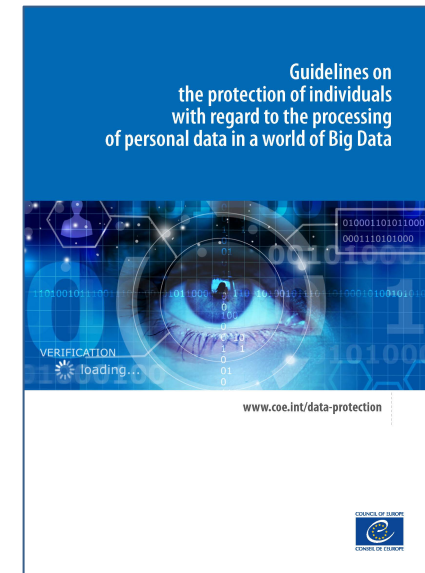
Fundamental principles clashing (potentially) with Big Data processing

- GDPR principles for processing
 - Fairness and transparency
 - Purpose **limitation**
 - Data **minimisation**
 - Data accuracy and relevance

- potential and likely tensions between GDPR principles and Big Data
 - lack of transparency towards data subject (complex computer analytics)
 - purposeful vs. “opportunistic” Big Data data collection & processing
 - Data minimisation vs. Data hoover
 - Big Data = collection of as much data as possible and then look for patterns and potential types of usage / value of that data

Guidelines (non-binding, but worth a read!)

- **Council of Europe:** Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data (Jan. 23rd 2017)
 - ethical and socially aware use of data; preventive policies and risk assessment; purpose limitation and transparency; by-design approach; consent; anonymisation etc.



- **EDPS:** Opinion 7/2015 – Meeting the Challenges of Big Data
 - more transparency; give users higher degree of control over usage; user friendly data protection design; raise accountability

- collection and analysis of data play a central role in Fintech
- raw data and data resulting from further processing
 - data generated by machines or processes based on emerging technologies such as machine learning
 - data used for:
 - identifying opportunities for new products and services
 - optimising pricing and manage existing risks
- data protection obligation under GDPR applies as long as it is personal data
 - otherwise: free flow of data (proposal for Regulation)

- Q of validity of consent
 - power imbalance → *freely* given consent?
- Q of informational imbalance
 - real possibility of verification / correction of inaccurate data?
 - Underlying problem of lack of transparency
- Q of use of algorithms / AI
 - Art. 22 GDPR – not to be subjected on decision based solely on automated processing (incl. profiling)
- Q of adequate balance between data sharing and data protection
 - concerns are diversified (data management, data standardization, data sharing, data security, data accessibility, data supervision)

Conclusions

- Fintech not per se “negative” / harmful impact
 - reliance on Big Data alone not a final decision towards inadmissibility
 - benefits for consumers and regulators apart from businesses
- **But:** Compliance with GDPR is not an option or choice that one can calculate within a risk assessment
 - Compliance is a must and lack of compliance sanctioned
 - Q of market value of compliance (or market risk for incompliance)
 - embrace opportunities of GDPR even though Big Data use indeeds gives a bias towards a more likely than not problematic service / business model
 - therefore: ensure (and calculate these costs prior to decision for launch of service) full compliance and be rather careful than take a bold approach
- **Future** will show how national DPA (Data Protection Authorities) will react towards FinTech and Big Data specificities in enforcement



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