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# The impact of the GDPR on FinTech

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SUERF THE EUROPEAN MONEY AND FINANCE FORUM

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**Agenda**

1. Setting the legal scene
2. The fundamentals remains
3. Key rules likely to impact FinTech
4. Concluding remarks

# Setting the legal scene

# Why relevant to FinTech?

Scope of application of DP rules:

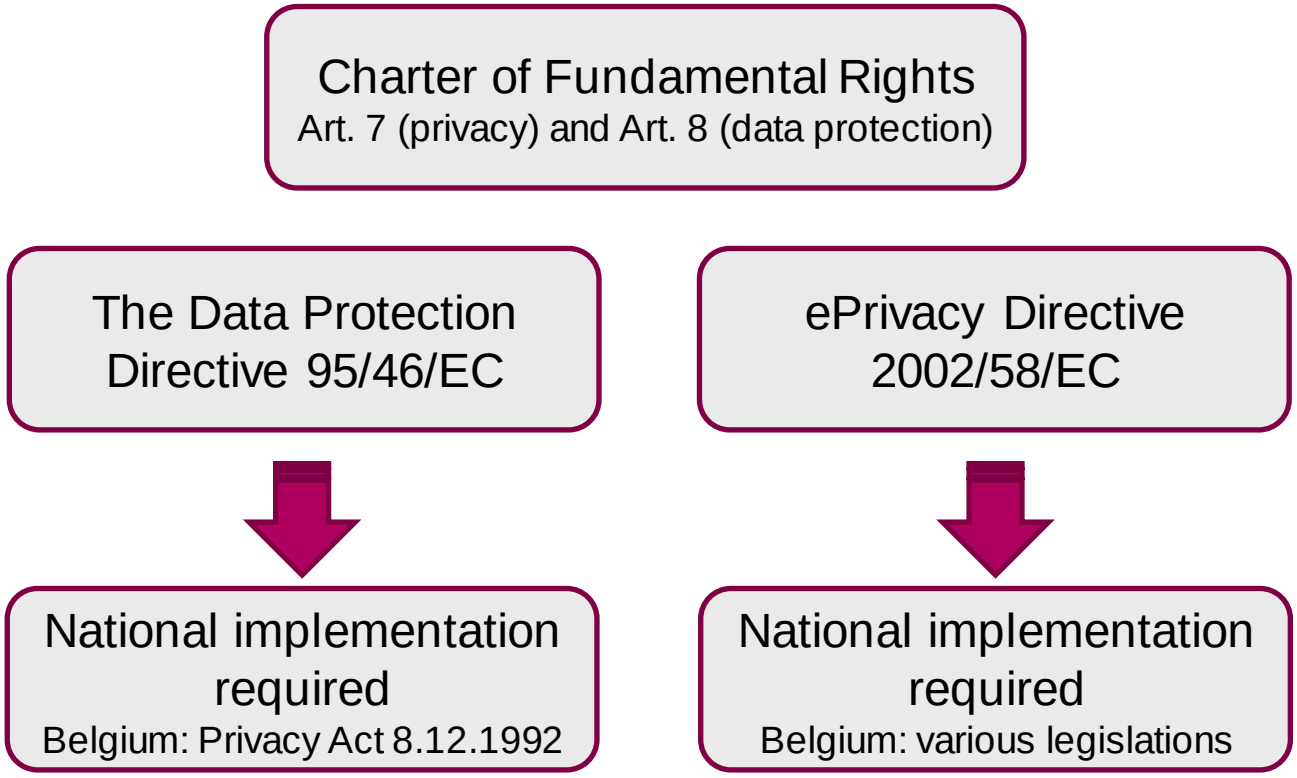
Processing of Personal Data

Any operation performed on personal data (broad list of examples covering every use of personal data)

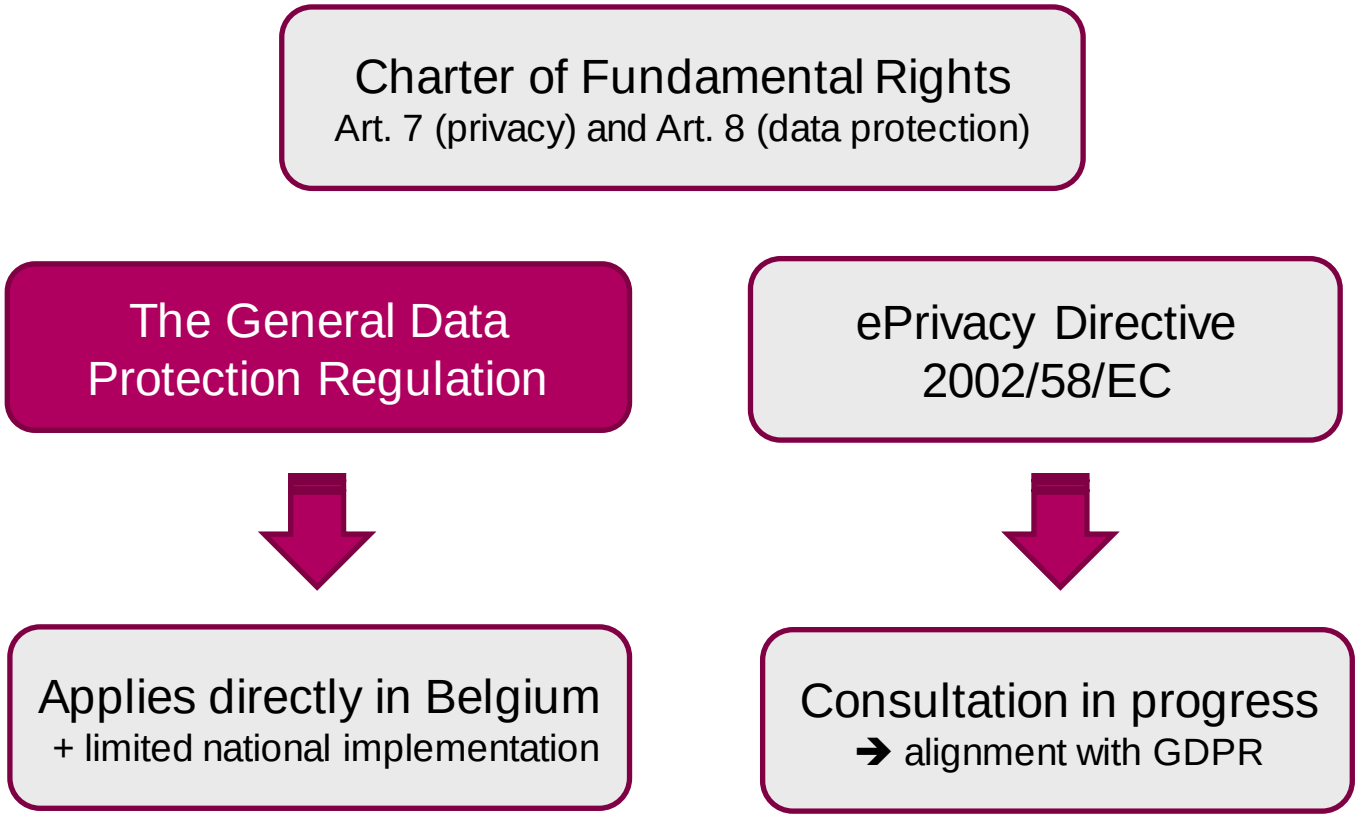
Any information related to an identified or identifiable individual

> e.g.: contact details and ID card, account and credit card numbers, biometrics, cookies, location data, transactions, etc.

# Data protection: today



# GDPR: as from 25 May 2018



# New sanctions

Combination of increased enforceability and higher administrative fines
➔ Boardroom issue

Fines up to the greater of:
- **€20 million** or
- **4%** annual worldwide turnover

Turnover on "undertaking" basis ➔ in principle group turnover

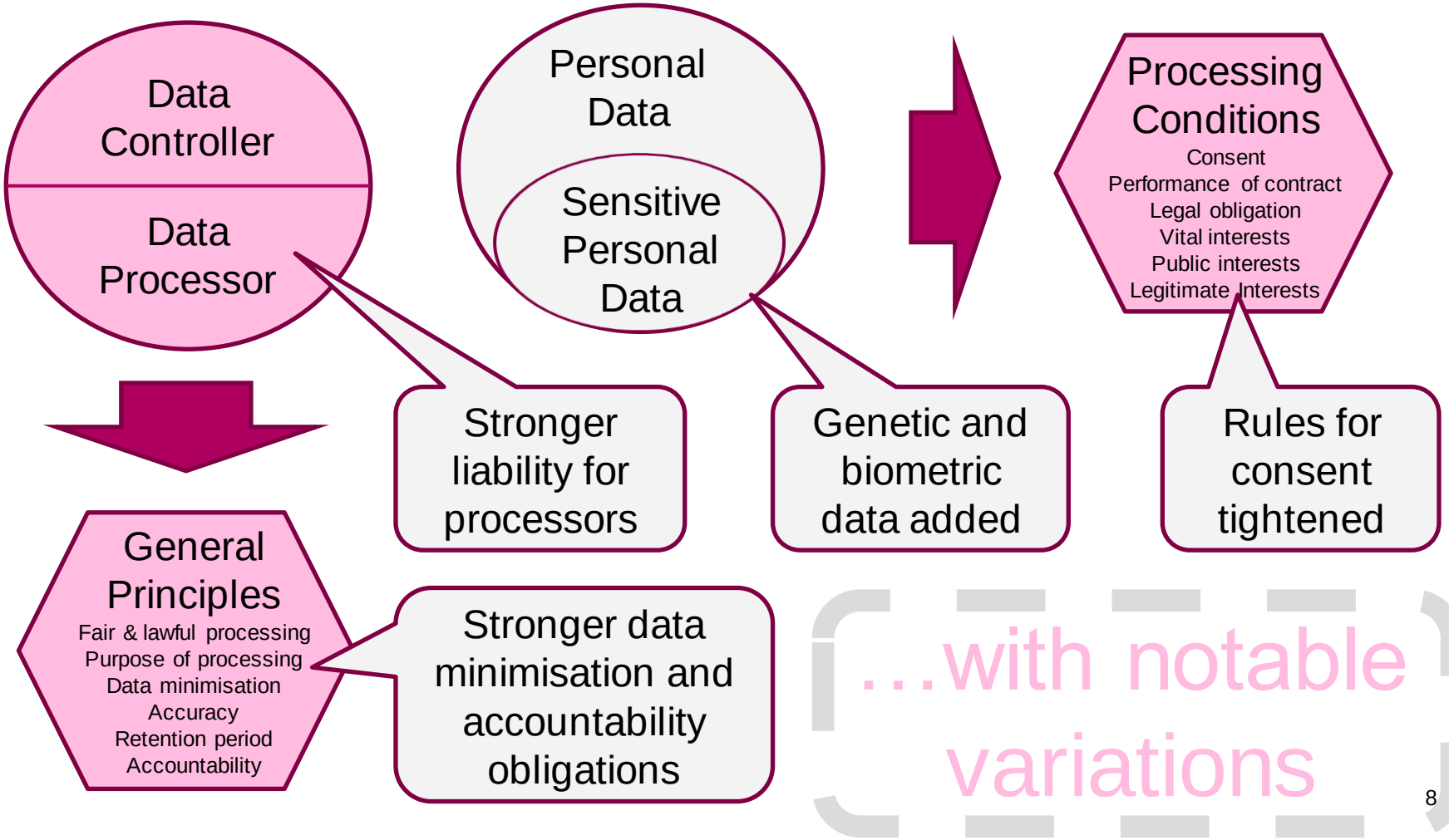
> Private enforcement (civil damages, collective redress = "class actions")

> Other regulatory sanctions:

- ✓ Warning and reprimand
- ✓ Order to comply with data subjects' request
- ✓ Order to bring processing into compliance
- ✓ Order to inform data subjects of data breach
- ✓ Temporary or permanent ban on processing
- ✓ Order to rectify, restrict or erase data
- ✓ Ability to withdraw certification
- ✓ Administrative fines
- ✓ Suspension of data flows outside the EEA

# The fundamentals remain

# GDPR - Fundamental principles remain…



# Key rules likely to impact FinTech

# What will be stricter? – Consent requirements

Key legal ground: validity threshold significantly raised
➔ Pure **opt-in**

Only usable when service is truly optional

freely given, specific, informed and unambiguous

clear affirmative action
(no pre-ticked boxes)

be recorded (proof)

when in writing, be clearly distinguished from other matters

be authorised by a parent if given by a child (<16) for online services

...and it can be withdrawn at any time

# What will be stricter? – Transparency

In clear and plain language, accessible and concise + new content requirements

➔ Need to update existing privacy notices

➔ Layering approach

**Directive 95/46**

1. *details re. data controller*
2. *purpose and legal basis of processing*
3. *recipients (or categories of recipients)*
4. *rights of access and correction*

**GDPR**

- ✓ details of representative and DPO
- ✓ details of ex-EEA transfer with details of safeguards (SCC/BCR)
- ✓ data storage period
- ✓ use of automated decision-making or profiling
- ✓ details of legitimate interests, when applicable
- ✓ where consent is relied on, the right to withdraw consent
- ✓ right to complain to a DPA
- ✓ right to object to processing
- ✓ right to data portability

# What will be stricter? – Data processing agreement

Reliance on service providers (e.g. SaaS, PaaS and IaaS)

Processors directly regulated under the GDPR

➔ With need to review their contracts and add new requirements

**Directive 95/46**

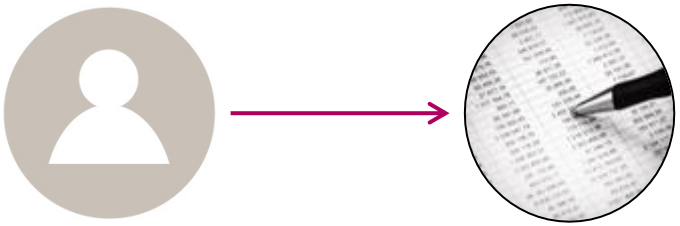
1. *only process on controller's instructions unless required to the contrary by EU law*
2. *take appropriate security measures*
3. *liability allocation*

✚

**GDPR**

- ✓ details of subject matter, duration, nature & purpose of processing + types of data
- ✓ inform controller if its instructions breach law
- ✓ specific/general consent for sub-processing
- ✓ assist controller when data subjects exercise rights
- ✓ ensure personnel accessing data are subject to confidentiality
- ✓ assist controller with data security and privacy impact assessments
- ✓ delete or return personal data on termination
- ✓ provide information on compliance and submit to audits
- ✓ notify controller of personal data breaches

# What will be new? – Accountability



Controller and processor

Obligation to keep record and demonstrate compliance

⇔ Notification to DPA abolished

Risk-based approach

Is processing “high risk”?

Need to conduct Privacy Impact Assessment

Consult DPA if there would be high risk *in the absence of mitigating measures*

# What will be new? – Privacy by design/default

**Privacy by Design**

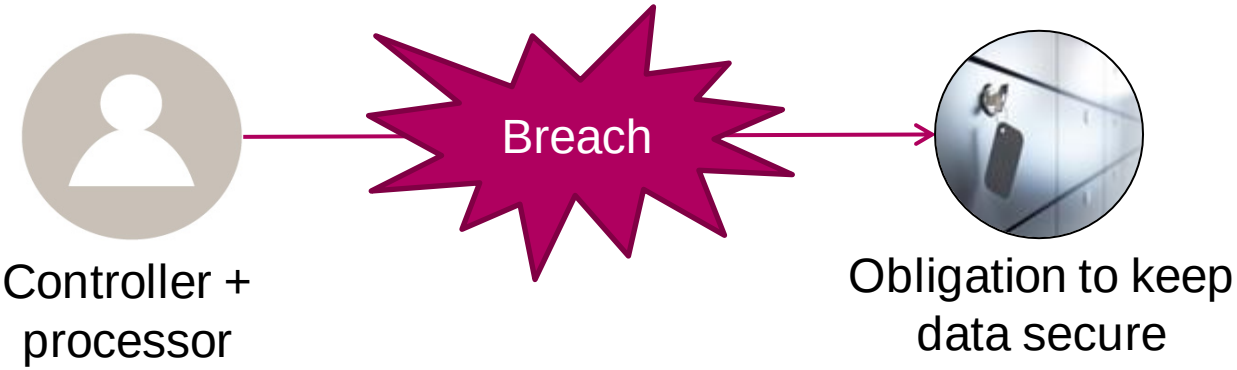
Ensure privacy is taken into consideration before processing personal data

**Privacy by Default**

The default setting must be set for the highest protection of data subjects


➔ Currently best practice, mandatory under the GDPR

# What will be new? – Data breach notification




| | |
|---|---|
| Notify the DPA | When "risk" for data subjects |
| | Within 72 hours unless justified |
| Notify data subjects | When "high risk" |
| | "Without undue delay" |

# What will be new? – New rights for data subjects

**Right to be forgotten**

Obligation to erase data in certain circumstances (e.g. consent withdrawn), with exceptions (e.g. for legal claims)

**Data portability**

Obligation to transfer data subjects' information from one provider to the other (similar to mobile number)

*Other relevant rights?*

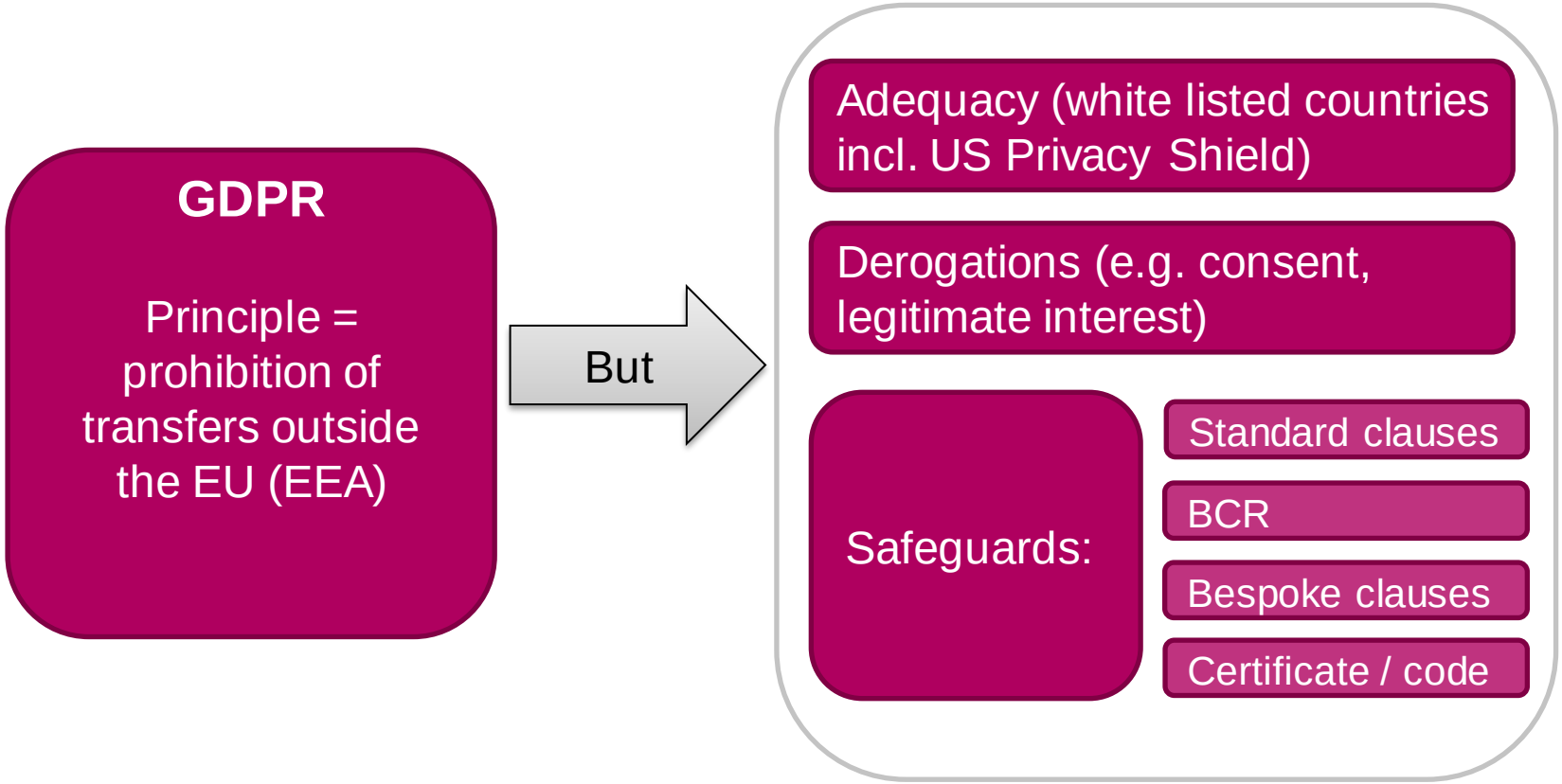
- Access and rectification
- Restrictions and objection (e.g. direct marketing)
- right in relation to automated decision-making (a.k.a. profiling)

# What about Security?

Legal duty to avoid unlawful processing ➔ appropriate level of security

- Risks
  - Accidental/unauthorised destruction, modification, leak or access
- Means
  - Technical measures (e.g. firewalls, anti-virus, encryption)
  - Organisational measures (e.g. training, NDA)
- Criteria
  - Nature of data
  - State of the art
  - Implementation cost

# What about data transfers?



# Concluding remark

# Concluding remark – Key messages

- Will impact FinTech
- Goal is to strengthen trust
- 18 months to prepare!
- Use the opportunity (branding)

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