AI in the context of GDPR compliance

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Structure:

1. **Background & Terms**
2. **GDPR Problems of AI**
3. **Conclusion**

- AI and Personal Data Processing
- Collection Limitation
- Purpose Specification
- Automated Decisions Making
I. Background and Terms
EU Charter of Fundamental Rights

Article 7 Respect for private and family life

• Everyone has the right to respect for his or her private and family life, home and communications.

Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

How to process personal data?

The right to **privacy** and right to **personal data protection** are Fundamental Rights in Europe.

- All personal data processing is interfering with individual rights.
- All personal data processing is therefore illegal, unless it can be justified.

**GDPR Lawful Grounds for Data Processing (Art 6 (1) GDPR):**

- Individual Consent
- Contract
- Legitimate Interest of the Controller
- Public Interest
- Protecting Vital Interest
- Legal Obligation
Big Data Processing
High Volume – High Velocity – High Variety

Artificial Intelligence (AI):
Model – Infer – Assess – Predict – Decide

Machine Learning
Learning – Automation – Model – ‘Think’
II. AI and GDPR

Problem 1: AI and personal data processing
Definition & Classification of Personal Data

‘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;
Data Classification

- Special Category of Personal Data
- Identified & Directly Identifiable
- Pseudonymized; Indirectly identifiable

Personal data

Data

Anonymized Data
What types of Data are processed?

Risk Mitigation Actions

- Anonymisation, De-Identification and Pseudonymisation
- Data Security
- Risk-Assessments on re-identification possibilities and potential effects
Problem 2: Data Minimisation
Data Minimisation Principle

...‘adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;’ (Art 5 (1) c) GDPR)
Problem 3: Purpose Specification
...collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;

1. Purpose need to be defined and specific + lawful (legal basis)
2. Data can also be processed for compatible purposes
4. Automated Decision-Making
...the right **not to be subject to a decision** based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

No such automatic decision can rely on processing of special data categories, unless explicit consent or substantial public interest laid down by law.

**Automated Decision-Making**

No such automatic decision can rely on processing of special data categories, unless explicit consent or substantial public interest laid down by law.
Part III: Conclusions
Do we process personal data?

Are we in the territorial scope of the GDPR?

Personal data processing requires:

Process data only in line with the data processing principles, and:

Have a legal basis for the processing of personal data.
Processing Data in AI contexts

1. De-Identify and Anonymize
2. Fair, Lawful, and Specified Purpose
3. No excessive collection and retention
4. Beware Automatic Decisions with (legal) effect!
5. Take RISK-Based Approach and implement Mitigation Actions
Mitigation Actions & Tools

- Privacy-, Risk-, Data Protection Impact Assessments
- (Algorithmic) Transparency
- Privacy by Design & Default
- Respect Individuals
- Notices & (real) Choices
- Get professional advice

Get professional advice
Questions?

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