

Subjects' rights and data privacy: GDPR's impact on educational institutions

Anca Parmena Olimid

University of Craiova, Faculty of Social Sciences, Romania

Daniel Alin Olimid

University of Craiova, Biology Specialization, Romania

Abstract

Purpose: The study is designed to explore the compliance and implementation of the General Data Protection Regulation (GDPR) within educational institutions (EI).

Methods: A multi-faceted methodology of the GDPR research, including the conceptual and legal analysis, and the interpretative approach is used.

Results: The results of the analysis focus on the role of data protection and the privacy requirements in the European Union (EU) institutional governance aiming to enhance key aspects of educational outcomes.

Implications: The GDPR enables key provisions to protect subjects' rights and foster data privacy focusing on the processing of personal data (PD) within the EI.

Keywords: education, GDPR, personal data, rights, data protection policy.

JEL Classification: I20, Z18

Corresponding Author name and email address: Anca Parmena Olimid, email: anca.olimid@edu.ucv.ro.

1 INTRODUCTION

The new European Union (EU) legal framework for the protection, processing and free movement of personal data (PD) was adopted on 27 April 2016 and was applied since 25 May 2018. The Regulation (EU) 2016 details the future data privacy and the foundation of the subjects' rights for ensuring harmonized policies and conditions for the processing of PD. The present study explores the legal provisions of the new legislation focusing on the data subjects' rights (DSR) and data privacy regarding the educational system and the educational institutions (EI) within the General Data Protection Regulation (GDPR) (2016). The research is designed to describe the legal settings, compliance and implementation of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of PD and the free movement of such data, and repealing Directive 95/46/EC considering the extensive literature in the

field of the EI and the particular regulatory mechanisms (Chassang, 2017; Lynskey, 2017; Dove, 2018; Olimid, Rogozea & Olimid, 2018; Mourby, Gowans, Aidinlis, Smith & Kaye, 2019; Mondschein & Monda, 2019). Moreover, to focus research on the GDPR's compliance within the EI, the study explores also the relevance of the latest studies and findings of the literature related to: 1) the perspectives of the practical experience, the work experience and experiential learning (Christou & Chatzigeorgiou, 2019) and the role of the internet tools and the learning approaches (Christou & Sigala, 2003); 2) the learning experiences and environment (Sigala & Christou, 2007; Hilbert, Coors, Kraus, Bischl, Lindl, Frei, Wild, Krauss, Goretzko, & Stachl, 2021); 3) the links between the educational programs, the management competencies, leadership and the necessity of an international curriculum (Christou & Eaton, 2000; Scheer, 2021); 4) the EU framework for educational policies, programmes and strategies (Har Carmel, 2016; Olimid, 2019; Brodin, 2019; Olimid & Olimid, 2019) and the links between the political context and the evaluation policies for the higher EI



(Papanikolaou, Roussakis & Tzionas, 2020a); 5) the data privacy policies and the educational practices (Hoel & Chen, 2018); 6) the right to PD protection and the digital environment (Poulet, 2018) and the use of data for secondary research within the GDPR legal framework (Peloquin, DiMaio, Bierer & Barnes, 2020); 7) the impact of COVID-19 pandemic on the human person and ethical encounters (Papanikolaou, Roussakis & Tzionas, 2020b; Buckner, Zhang & Blanco, 2021; Mok & Montgomery, 2021; Stevanović, Božić & Radović, 2021; Krishnamoorthy & Keating, 2021; Crick, 2021).

2 RESEARCH METHODS

In this context, the present study shall reveal an in-depth research analysis of the following main directions: 1) the GDPR compliance considering the EI (state schools and universities); 2) the requirements for the EI to record all details regarding the processing of PD; 3) the challenges of the EU institutional governance in the field of subjects' rights and data privacy. Moreover, to explore the data protection and the privacy requirements in the EU institutional governance, the study extensively focuses on 1) the main definitions of the GDPR with its impact on the educational sector and 2) DSR and the type of PD collected by the EI.

The paper also focuses on a multi-faceted methodology of the GDPR research, including the conceptual and legal analysis and the use of the interpretative approach. The interpretative approach is also engaged as an innovative framework to focus on the three major principles of data protection privacy focusing on the EI: 1) the principles focusing on the right to information (Recital 73 GDPR) and the processing of PD following the processing purposes [Article 5(1)(c) GDPR]; 2) transparency concerning the processing of PD [Recital 78 and Article 5(1)(a) GDPR] and 3) the legitimacy of the purpose of the processing of PD [Article 5(1)(b) GDPR]. Furthermore, the study confirms the necessity of the four determinants of the legal analysis namely: 1) the settings of the case; 2) the applicable legal provisions; 3) the effective application and 4) the consequences.

3 RESULTS AND DISCUSSION

To address the legal framework of the GDPR, the research highlights a harmonized framework for all Member States focusing on the protection of fundamental human rights and the processing of the PD. Moreover, the data gathering procedures focus on both types of EI: 1) higher EI as "public authorities" and 2) state schools as non-public authorities, but under the control of specific local authorities. The data research enables a rigorous exploration of the standards and normative provisions including the protection of the data subject (DS), consent and data protection officer (DPO). Considering the EI, as the GDPR states, the analysis of the relationship between the subjects' rights and data privacy engages the following research approaches: the type of PD collected by the EI; the data controllers and data processors; the lawfulness of processing of the personal data (LPPD) and the legal provisions concerning the DPO.

Drawing on the principles of processing PD and subjects' rights (SR), here including the information concerning "an identified or identifiable personal data" (Recital 26 GDPR) and the typology of the PD (Recital 45 and Recital 81 GDPR), other recent researches approach a complex study of the EI (mainly higher education institutions) and the PD collected to describe the framework of the implementation of the GDPR in the EI sector (Mekovec, Peras & Zrinski, 2019). Furthermore, the studies of the legal provisions of GDPR point to two types of data collected by the EI: 1) the regular PD (e.g. the names of the students, the name of the staff, the email and the physical addresses) and 2) the "special categories of personal data" or "sensitive data" (Recital 10 GDPR) namely: the biometric data, the genetic data, the health data etc. by exploring also: 1) the right to data privacy and the collection of big data (McDermott, 2017); 2) the compliance with the GDPR concerning the informed consent and the harmonization of the data protection provisions at the Member States level (Crutzen, Peters & Mondschein, 2019); 3) the GDPR framework to protect the DSR and processing of PD (Ducato, 2020).

The study also evaluates two components drawing on the data controllers and data processors. In this direction, three central areas of the results are discussed in detail: the responsibilities and the organizational aspects regarding the data controller, the data processor and the written authorization (Articles 24-31 GDPR). Therefore, it is argued that the legal provisions concerning the data controller and the data processor serve as one of the major provisions of the GDPR focusing on the educational system. Furthermore, the linkages between the technical aspects and the data security are examined according to the following legal provisions: Recitals 13, 18, 28, 48, 66, 68, 79 and Articles 24-31 GDPR. Based on such legal settings, this article examines the approach to the educational system to the following key findings of the study, namely: 1) the right to information; 2) the right to object to the processing of the PD; 3) consent; 4) the right to obtain confirmation; 5) the right to data portability.

Settings of the case

As the rules and legal provisions of the GDPR apply in the context of the activities of "an establishment of a controller or a processor" in the EU [Article 3(1) GDPR], the higher EI is considered, classified and analyzed as "public authorities". Under these legal settings of the case, the tasks and duties of the EI (namely higher education institutions) focus on the two dimensions of the processing of PD: 1) the teaching purposes and 2) the research purposes. The paper generates exploratory research on ten rights based on the GDPR according to: article 15 ("right of access" and "right to be informed"); article 16 ("right to rectification"); article 17 ("right to erasure"); article 18 ("right to restriction"); article 20 ("right to data portability"); article 21 ("right to object"); Recital 65 ("right of freedom of expression"); Recital 71 ("automated decision-making" and the processing of special data); Recital 73 ("rights of information"); Recital 78 ("right to data protection"). Moreover, the definitions for: "personal data", "request", "compliance", "data breach notification" and "pseudonymisation" refer to large and complex issues impacting the educational sector. In this direction, our legal analysis overviews the concepts and theoretical approaches

that have been acknowledged in exploring their relevance for the educational system. Our research covers the definitions for: "personal data", "data controller", "data processor", "pseudonymisation" and "data breach notification". Furthermore, the definition of "personal data" [Article 4(1) GDPR] provides insights into the field of the physical, social and professional identification of a person.

Other two definitions provide knowledge of the status of the EI within the GDPR legal framework. First, the "data controller" [Article 4(7) GDPR] reveals the case of the public authority that acknowledges the purposes for the processing of PD. Moreover, the "data processor" [Article 4(8) GDPR] identifies the case of the public authorities processing PD in favour of the controller. However, the issue of the "notification of a personal data breach" (PDB) is identified in Article 33 GDPR and it raises awareness of the: 1) notification to the supervisory authority [Article 4(1) GDPR]; 2) the notification provided by the processor to the controller for the cases of PDB [Article 4(2) GDPR].

Considering the legal provisions of the GDPR, the EI is considered as a "data controller" following the same rules as specified in Article 33 GDPR. Overall, the definition of "pseudonymisation" [Article 4(5) GDPR] considers a comprehensive understanding of the legal settings of processing of PD in order for the PD not to characterize a particular DS. Nevertheless, the definition of "consent" [Article 4(11) GDPR] addresses three specific legal determinants: 1) the DS wishes; 2) the statement procedure or 3) an action confirming the agreement of a DS for processing PD. Based on the legal settings of the GDPR, the research publications on the topic of the PDB examine, for example, the necessity for the EI to record all PDB. Ashton argues five examples of PDB in the EI, namely schools: 1) accessing of PD without authorisation; 2) the situation of an action or inaction (deliberate or accidental cases) issued by the school or a data processor of an EI; 3) errors causing wrong sending of emails, messages or other types of communication issued by the EI; 4) illegal action causing the modification of PD; 5) technical, operational or organizational errors causing deficiency for PD (Ashton, 2020).

Applicable legal provisions

The paper also investigates the applicable legal approaches of the GDPR to the educational system, focusing on the EI as "public authorities". This issue enables a rigorous exploration of the standards and normative provisions including the protection of the DSR, consent and DPO. Under the legal provisions of the GDPR, in the case of the higher EI, we identify the following applicable situations: 1) the focus on subjects' rights (information concerning "an identified or identifiable personal data") (Recital 26 GDPR); 2) the focus on data privacy policy; 3) the focus on the processing of PD; 4) the focus on the typology of the PD (Recital 45 and Recital 81 GDPR). Considering the types of data collected by the EI within the legal context of GDPR, we shall focus on the following applicable legal provisions: main definitions (Article 4 GDPR); principles (Article 5 GDPR); conditions and legal provisions for consent (Article 7 GDPR); the processing of special categories of PD (Article 9 GDPR) access to PD (Article 13 and Recital 10 GDPR).

For example, there are two types of data collected by the EI: 1) regular personal data focusing two main perspectives: the personal identification and the professional information, here including: identity (name and surname/ over names); personal identification (the names of the students; the email of the students; the name of the staff; the email of the staff; the physical addresses; personal serial number and identity card / passport number); the contact details and data (home telephone, mobile telephone, emergency contact telephone, etc.); education: information, details and data: high school attended, high school grades, disciplinary records, marks, diploma details, other details concerning the academic affiliation: faculty, department, specialization, courses and grades (current and past), attendance, progress reports; the PD focusing: country of residence, home address, civil status, ethnicity, nationality, citizenship, school registration number mapping year of study, class etc.; the financial information (card and bank account, other financial payments, etc.); health data and information (health data, disability, etc.); email institutional address and personal signature; the professional information (programmes, work places etc.); 2) the special categories of PD (e.g. the processing of PD under certain conditions-parental consent). In this field, the recent literature developed an extensive analysis of the PD protection requests following the legal provisions of the GDPR. Puljak *et al.* (2020) exemplify the situation of the Croatian Personal Data Protection Agency concerning the specific requests and complaints before and after 2018 (the year of entering into force of the GDPR) (Puljak, Mladinić, Iphofen, & Koporc, 2020). According to the results of the study, the post-GDPR requests (personal/individual or institutional requests) from the academic and research institutions map the following categories of PD: 1) PD about students within the context of research activity; 2) the legal provisions focusing the research purposes; 3) PD transfer related to research studies; 4) the patient data; 5) pseudonymization of data; 6) processing of PD within the context of the EU projects (Puljak, Mladinić, Iphofen, & Koporc, 2020).

Furthermore, following the applicable legal settings of the GDPR, Hoel and Chen argue the importance of the privacy policies for the future of the educational system and the learning patterns by exploring the cultural, social and legal patterns of the principles engaging data privacy and data protection (Hoel & Chen, 2018). The mentioned study focuses on the landscape of the new technologies, the national regulatory approaches for the educational sector and the individual and institutional ability to meet the regulatory framework of the GDPR (Hoel & Chen, 2018). This approach to the applicable legal settings describes a complex analysis of the legal obligations and interests involving: "educational values", "educational big data", "educational specific requirements", "education and training", "educational setting", "educational opportunity", "educational technologies", "educational policies", "educational data privacy", and "educational institution" (Hoel et al. 2018). Other studies navigate the systems perspective of the applicable legal settings and the implementation of the data protection rules according to the GDPR provisions associating new approaches to large data quantities and data processing (Shastri, Banakar, Wasserman, Kuman &

Chidambaram, 2020). Nevertheless, Wolters acknowledges the issue of the security of PD and the level of protection offered by the GDPR by advancing complex research on the PD for data controllers and data processors (Wolters, 2017).

Effective application of the GDPR

The effective application of the GDPR and consequences of the rights to the processing of PD advances the following approaches: 1) the right to information and to receive information about how and why the educational institutions process the PD; 2) the DSR and the right to object to the processing (exceptions); 3) consent and the right to withdraw the consent if the processing is grounded on the legal provisions of the article 6(1) or Article 9(2)(a); 4) the right to obtain a confirmation from the EI, specifying the access to/processing of PD; 5) the right to delete or to restrict PD concerning own person (exceptions); 6) the right to data portability considering the legal settings for consent as stated in Article 6(1)(a) or Article 9(2)(a), or a contract-Article 6(1)(b). Consequently, the research of the GDPR also states the following conceptual and legal insights into the definitions and tasks of the DPO giving an initial account of how the designation of the DPO is regulated in Article 37 GDPR by pointing: to the importance of a DPO for the data controller and the data processor; the position and involvement of the DPO involving tasks and duties under the regulatory provisions of the Article 39 GDPR.

Moreover, the tasks of the DPO contribute to the knowledge of how the right to information and the right to provide advice for the data controller and data processor relates to the educational sector, by initiating a focused approach to the principles of cooperation, monitoring compliance with the legal settings of the GDPR, performance and consultation as basing processing operations by the DPO. Regarding the tasks of the DPO within the organizational structure of the EI, we identify the following activities: monitoring the compliance of the EI with the GDPR and collecting data concerning the processing of PD; training and consulting the staff of the EI to acknowledge the GDPR judicial settings; engaging the connection between the EI and the national supervisory authority, auditing and monitoring policies, and targeting the processing activities.

Lawfulness of processing of PD

Once the legal design of DSR and consent has been defined, our study distinguishes the basic elements of the LPPD. In a conceptual sense, the elements of the processing activity, the public interest, the types of data, the processing operations and the privacy information are stated in Article 6 GDPR.

The fifth aspects described in Article 6(1) GDPR indicate that the first steps in the LPPD are the “given consent”, a contract, the accomplishment of a legal obligation having the data controller as subject and the legitimate interests. Several observations have to be considered for the LLPD within the EI. The first observation nominally identifies five legal bases: 1) consent [Article 6(1)(a) GDPR]; 2) a contract signed by the EI and the DS Article 6(1)(b) GDPR; 3) the legal obligation in accordance with the GDPR legal obligation [Article 6(1)(c) GDPR]; 4) the vital interests for the protection of the DS and other persons vital interests [Article 6(1)(d) GDPR]; 5) the public interest considering the

attribute of the public authority provided for the EI [Article 6(1)(e) GDPR]. The second observation assigns the purpose of processing according to the EU law and national law of the data controller in a Member State. The third observation shows the appropriate variables for processing PD where there is no consent from the DS. Furthermore, the three observations underlie the concepts of “consent”, “public interest” and “legitimate interest”.

The interpretative approach

The interpretative approach focuses on four principles and objectives of the GDPR exploring the discussion of the results, as follows: 1) the right to information (Recital 73 GDPR); 2) processing of PD [Article 5(1)(c) GDPR]; 3) transparency concerning the processing of PD [Recital 78 and Article (5)(1)(a) GDPR]; 4) legitimacy of the purpose of the processing of PD [Article 5(1)(b) GDPR]. Other key changes for the EI include: 1) ensuring compliance (Recital 11 GDPR; evidencing and ensuring compliance with the rules and the procedures for the protection of PD); 2) protection of individual rights including: data removal, withdrawal of consent and data portability; 3) the LPPD according to Article 6 GDPR (the legal basis for processing the PD, provided before processing of PD); 4) the administrative fines stated in Recital 148, Recital 150, Recital 151, Article 83 and Article 84 in case of infringement of the GDPR. Focusing on how the tasks of the DPO are presented within the GDPR provisions, the last observation also points to the specific provisions for the designation and duties of the DPO (Articles 37-39 GDPR) within the EI.

4 IMPLICATIONS

Following the four determinants of the legal analysis (settings of the case, the applicable legal provisions, the effective application and the consequences), the paper concludes by specifying the importance of GDPR for the educational system and data privacy. To address the legal framework of the GDPR, the study highlights: a harmonized framework for all Member States focusing on the protection of fundamental human rights and the processing of the PD here including the case of the EI. The discussion of the DSR and data privacy policy has been assessed to setting up the case of the EI. As our results suggest, there are other implications of the research concerning the data controller, data processor and the DPO. As we emphasized in the interpretative approach, the right to information and the principle of transparency in the processing of PD represents the key to understanding compliance with the GDPR. The four-way analysis (the settings of the case, the applicable legal provisions, the effective application of the GDPR and the interpretative approach) enabled the investigation of the type of data and institutional characteristics implemented within the educational system. The study reveals additional information on the LLPD and summarizes the complex design of the GDPR for the EI based on the category data and an extended discussion of the data privacy policy. The choice of the research design formulated the criterion of the conceptual and legal significance of the GDPR for the EI, performing the descriptive analysis of the applicable legal provisions and

effective application by summarizing and categorizing the relevant information and PD.

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