GDPR FINALLY BECAME REALITY

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FAIB
be international... in Belgium

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I. INTRODUCTION

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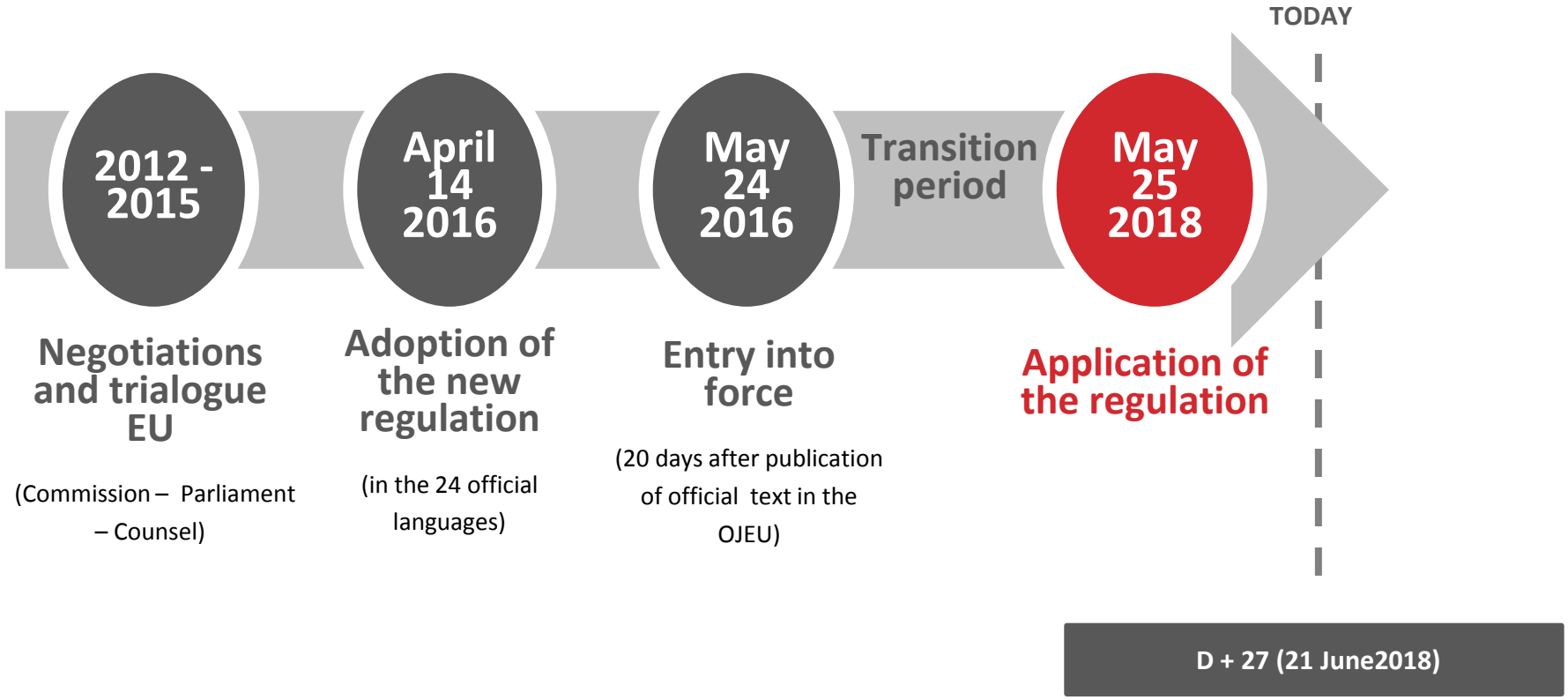
GDPR: calendar and timeline



II. PRIVACY
Concepts and Principles

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Legislative framework in Belgium

Belgian Privacy Act

***Act** of **8 December 1992** on the protection of privacy in relation to the processing of personal data.*

Data Protection Directive

***Directive** 95/46/EC of the European Parliament and of the Council of **24 October 1995** on the protection of individuals with regard to the processing of personal data and on the free movement of such data.*

General Data Protection Regulation (GDPR)

***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 personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).*

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Directive vs. Regulation

Data Protection Directive

- ✓ Old directive (1995) vs new technology
- ✓ Fragmentation and inconsistency due to 28 local interpretations
- ✓ Lack of compliance due to absence of enforcement / sanctions

GDPR

- ✓ Adapt legal framework to the globalized digital society
- ✓ "One ring to rule them all"
- ✓ Increased rights for individuals
- ✓ Increased obligations for organizations
- ✓ Increased enforcement

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Different types of data

PERSONAL DATA

All information concerning an identified or identifiable physical person.

- Name
- Picture
- Phone number (personal/professional)
- Bank account number
- E-mailaddress
- IT (Addresses, IPv4, IPv6, Mac address, DeviceID, …)
- License plate

PSEUDONYMOUS PERSONAL DATA

Data that cannot be linked to a certain person without relying on additional information.

SENSITIVE PERSONAL DATA

- Medical file (genetic & health records)
- Fingerprint / iris scan (biometrical data)
- Judicial file
- Ethnic origine(race or origine)
- Sexual orientation (behaviour or preference)
- Political preference
- Religious or philosofical beliefs
- Trade-Union membership
- Criminal convictions and offenses / security measures.

ANONYMOUS DATA

Data that is neither personal, neither pseudonymous.

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Processing and relevant actors

PROCESSING

Any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as

- collection, recording, organization,
- storage, adaptation or alteration,
- retrieval, consultation, use
- disclosure by transmission, dissemination,
- alignment or combination,
- blocking, erasure or destruction.

CONTROLLER

The **natural/legal person** which **determines the purposes** and **means** of the processing of personal data.

PROCESSOR

A **natural/legal person** which processes personal data **on behalf of the controller**.

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General principles

Legality	Each processing must be based on a legal basis	**Finality**	Specific, adequate and legitimate goal

Proportionality	▪ Precise, relevant and necessary (not excessive) data ▪ Exact and up-to-date data ▪ Reasonable conservation period

Security and confidentiality	▪ Access data protection (secured servers, passwords etc.) ▪ Confidentiality agreements

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General principles: principle of legality

6 legal bases in order to process personal data:

Consent

Necessary for the **execution of a contract**

Legal obligation

Protection of **vital interest**

Missions of **public interest** or exercise of **public authority**

Legitimate interest of the controller or third party

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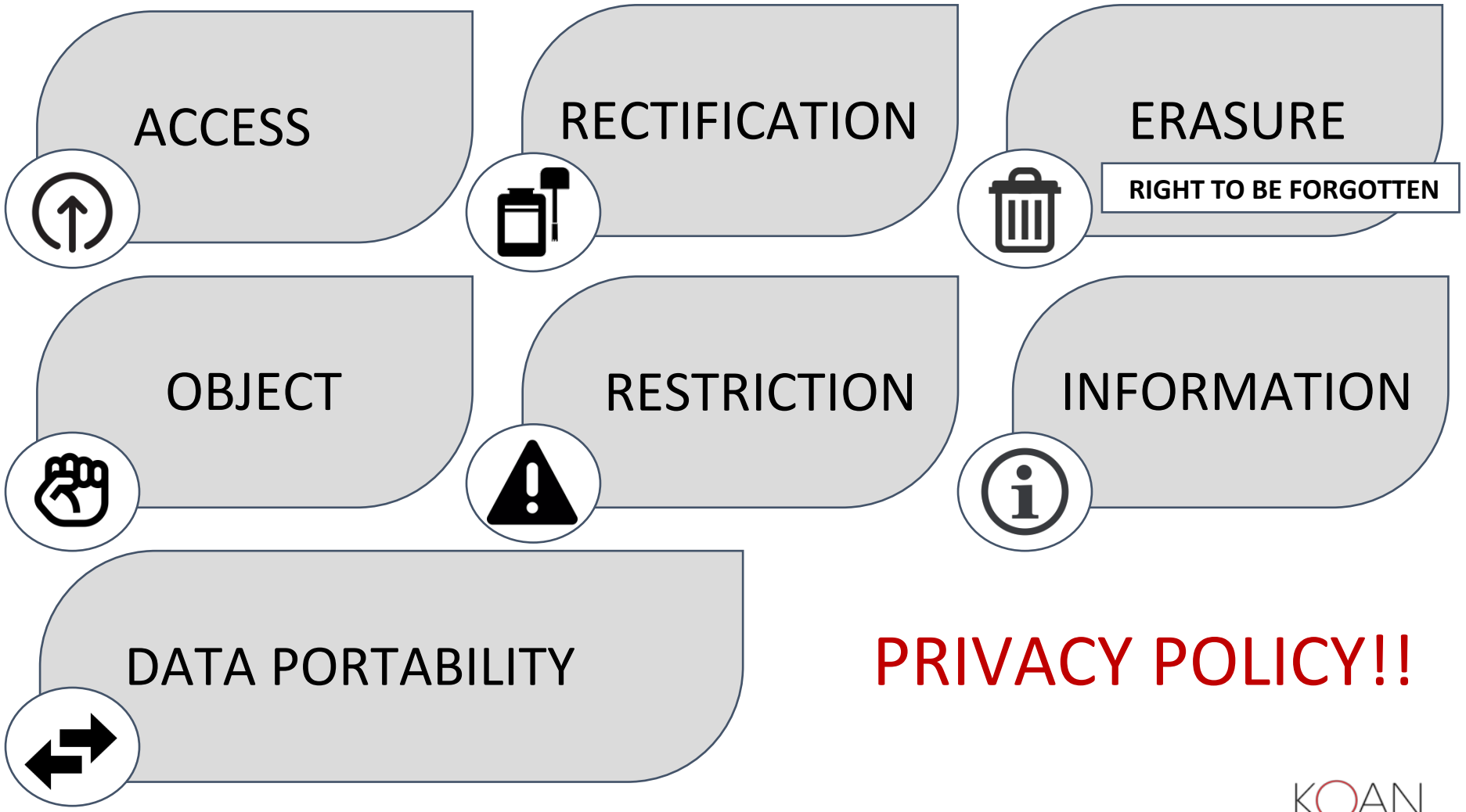
DATA SUBJECT RIGHTS



PRIVACY POLICY!!

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Transfer of personal data abroad

TRANSFER

WITHIN the European Economic Area

→ **no obstacles**

TRANSFER

OUTSIDE the European Economic Area

↓

COUNTRY OUTSIDE EEA

WITH ADEQUATE LEVEL OF PROTECTION ?

YES:

WHITE LISTED COUNTRIES

(Switzerland, Andorra, Argentina, Guernsey, the Isle of Man, the Faroe Islands, Jersey, Israel, New Zealand and Uruguay)

→ **No obstacles**

NO:

USA: Binding Corporate Rules, EU Commission's model clauses, or EU-US Privacy Shield

Other countries: Binding Corporate Rules, EU Commission's model clauses

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III. GDPR : TOP 5 KEY ISSUES

I. Consent

II. Legitimate interest

III. Breach notification

IV. Accountability & Sanctions

V. Data Protection Officer (DPO)

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I. Consent

Consent for ordinary categories of data

- **Free**
- **Specific**
- **Informed**
- **Unambiguous**

Consent for special categories of data

Consent must be **explicit**
(not defined but stronger than 'ordinary' consent)

Parental consent for children aged between **13 and 16 years**

(Leeway for each Member State)

Examples:

Cookie banner (or cookie policy) on website

Explicit "opt-in" when registering a new account (user);

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II. Legitimate interest

Legitimate interest vs **legitimate expectation**

- Balance of interests (on a case-by-case basis)

(47) **The legitimate interests of a controller**, including those of a controller to which the personal data may be disclosed, or of a third party, **may provide a legal basis for processing**, **provided that the interests or the fundamental rights and freedoms of the data subject are not overriding**, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. Such legitimate interest could exist **for example** where there is a relevant and appropriate relationship between the data subject and the controller **in situations such as where the data subject is a client or in the service of the controller**. (…)

The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

Important for **Marketing purposes**

- Business cards
- Opt-out
- Keep track of information

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III. Breach notification

When ?

Any **data breach must be notified** to the supervisory authority by the data controller **within 72 hours**

Who ?

Notification to the data subjects "***without undue delay***" if the breach could create a "***high risk***" to them

Exceptions

No notification to the privacy authority if the data breach **is not "likely to cause any risk to the rights and freedom of the data subjects"**

No notification to the data subject if the data breach **is not "likely to cause a high risk to the rights and freedom of the data subjects"**

Notification in chain

The **processor** should **notify any data breach to the data controller** who will on his turn notify the privacy authority

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IV. Accountability…

- **Much heavier** than in the Directive (1995)
- Real need to **demonstrate compliance** with the GDPR
  - **Adoption of policies**
  - **Regularly review** and **assess** data protection **measures**
  - Adoption or approval of established **codes of conduct**
  - **Keep records** of all processing activities

No record of processing activities required (exception):

- **Exception** for companies with < 250 employees **provided that** :

  (i) the processing is **not likely to give rise to a risk** to the rights and freedoms of the data subjects;
  (ii) the **processing is occasional**; and
  (iii) **no sensitive data** are processed.

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… and Sanctions

Up to 10M€ or 2% of worldwide turnover

For issues related to :

- Failure in **security of the processing**
- Infractions regarding to **privacy by design / by default**
- **Data Protection Officer**
- Failure to **notify a data breach**
- …

Up to 20M€ or 4% of worldwide turnover

For issues related to :

- **Sensitive data**
- **Transfers** of personal data
- Non compliance with a **supervisory authority's order**
- Issues regarding **data subject's consent**
- …

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V. Data Protection Officer (DPO)

- **DPO** : **contact** for issues related to **data of a natural person**.

- **Main role** : being involved, properly and in a timely manner, in all issues which relate to the protection of personal data.

Mandatory DPO for certain organisations

- ✓ The processing is carried out by **a public authority or body;**
- ✓ The **core activities** consist of processing operations which require **regular and systematic monitoring** of data subjects **on a large scale**;
- ✓ The **core activities** consist of **processing** on a large scale of **special categories of data**.

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V. Data Protection Officer (DPO)

Requirements

- ✓ Expert level
- ✓ Questions related to personal data (appropriate way and in due time)
- ✓ Necessary resources (personal, time, financial means…)
- ✓ Full autonomy (internal or external DPO)
- ✓ No conflict of interests (cannot be a CEO, COO, CFO, CMO, …)

Tasks

- ✓ Ensure conformity with the GDPR and an effective protection of data
- ✓ Develop, review and update data protection systems (IT, policies, etc)
- ✓ Inform, educate and advise the officers/and personnel
- ✓ Point of contact and cooperation with the supervisory authority
- ✓ + ...

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IV. COMPLIANCE IN 6 STEPS

Get ready in 6 steps

Creation of a team dedicated to the GDPR

Mapping data processing and recommendations

Processing sheets and records of processing activities

Risk identification, analysis and assessment (PIA)

Organization of internal procedures

Document compliance

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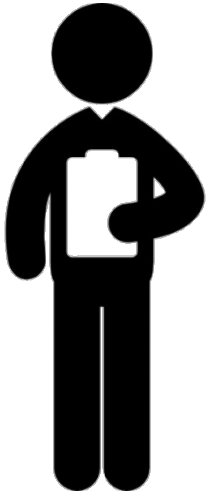
We can help you in two ways…

INDIVIDUAL



COLLECTIVE

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V. Q&A

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