

Exploring the crossroads between audiovisual media regulation and data protection

Prof. dr. Eva Lievens
50th EPRA meeting, Athens, 24 October 2019

Intro

Why are we discussing data protection at EPRA?

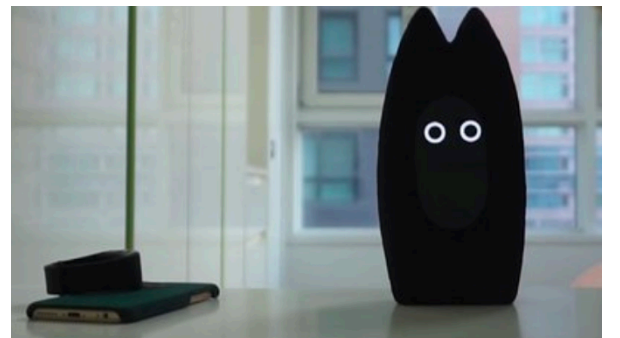
Data protection 101

The General Data Protection Regulation and the processing of children's data

Future opportunities

A look towards the future: an integrated approach to the rights of the child in the digital environment – opportunities for NRAs and DPAs

Introduction: the crossroads between audiovisual media regulation and data protection



Meet Fribo, a robot built for lonely young people



best interests of the child (article 3 UNCRC)

right to be heard (article 12 UNCRC)

right to development
(article 6 UNCRC)

right to freedom of
expression
(article 13 UNCRC)

right to privacy
(article 16 UNCRC)

right to have access to
diverse information +
protection against
harmful content
(article 17 UNCRC)

right to play
(article 31 UNCRC)

right to protection
from commercial
exploitation
(article 32 UNCRC)

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NRAs

DPAs



YouTube^{DE}



Sign in to confirm your age
This video may be inappropriate for some users.

SIGN IN

Article 6a AVMSD

1. Member States shall take appropriate measures to ensure that **audiovisual media services provided by media service providers** under their jurisdiction, which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them.

Such measures may include selecting the time of the broadcast, **age verification tools** or **other technical measures**. They shall be proportionate to the potential harm of the programme.

The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.

2. **Personal data collected or otherwise generated by media service providers *pursuant to* paragraph 1 shall **not** be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.**

[Recital 21] The establishment of child protection mechanisms by media service providers inevitably leads to the processing of the personal data of minors. Given that such mechanisms aim at protecting children, personal data of minors processed in the framework of technical child protection measures should not be used for commercial purposes.

Article 28b AVMSD

1. Member States shall ensure that **video-sharing platform providers** under their jurisdiction take appropriate measures to protect:
 - (a) minors from programmes, user-generated videos **and** audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1);
 - ...
 3. Those measures shall consist of, *as appropriate*:
 - ...
 - (f) establishing and operating **age verification systems** for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;
 - ...
 - (h) providing for **parental control systems** that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;
 - ...
- Personal data of minors collected or otherwise generated by video-sharing platform providers *pursuant to* points (f) and (h) shall **not** be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.**

Member States shall establish the necessary mechanisms to **assess the appropriateness of the measures**, referred to in paragraph 3 taken by video-sharing platform providers. Member States shall entrust the assessment of those measures to the **national regulatory authorities and/or bodies**.

Guidelines to respect, protect and fulfil the rights of the child in the digital environment



56. States should require the use of effective systems of age-verification to ensure children are protected from products, services and content in the digital environment which are legally restricted with reference to specific ages, using methods that are consistent with the principles of data minimisation.

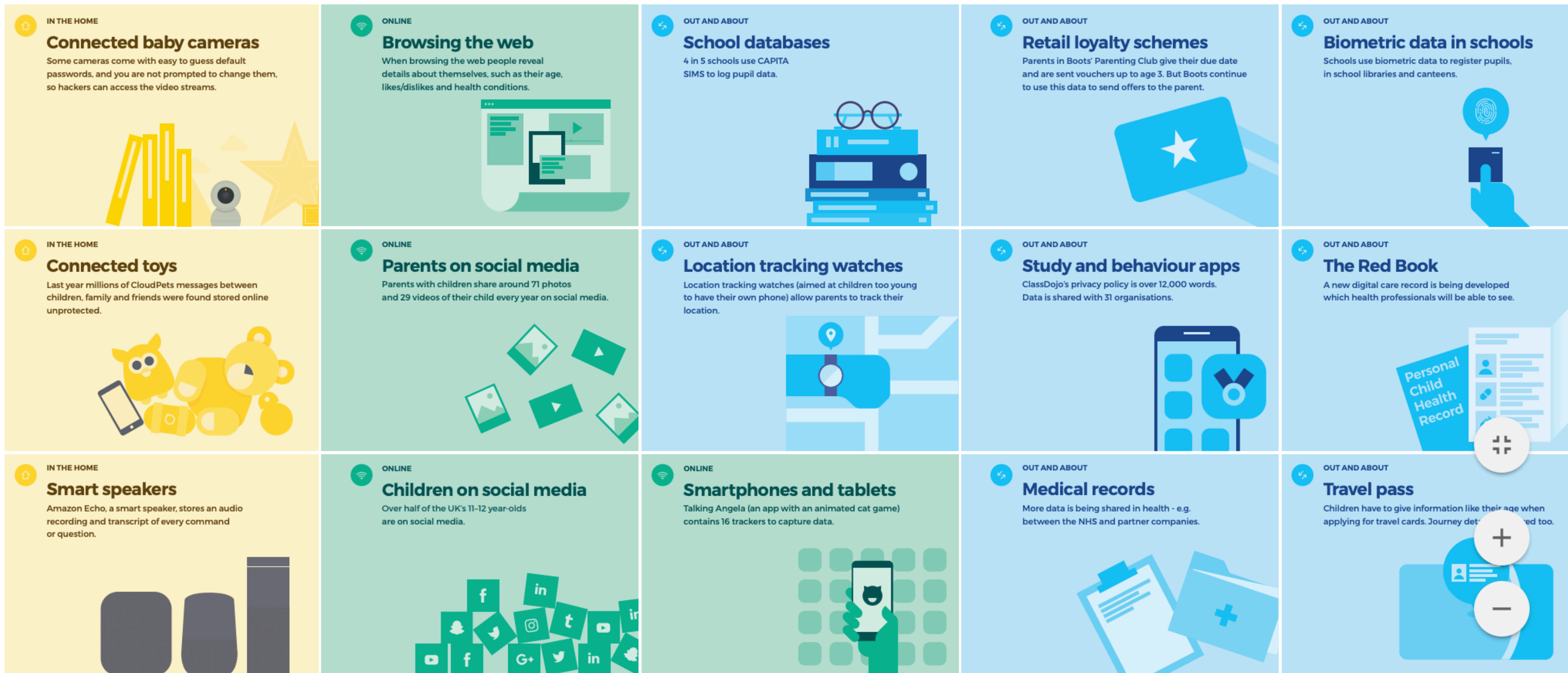
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for and with children



Council of Europe, [Recommendation CM/Rec\(2018\)7](#) of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment

The General Data Protection Regulation and the processing of children's data



Official Journal of the European Union



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Legislation

L 119

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Contents

I Legislative acts

REGULATIONS

- ★ 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) ⁽¹⁾ 1

DIRECTIVES

- ★ Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA 89
- ★ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime 132

Regulation!

(binding legislative act; must be applied in its entirety across the EU)

Aim: reduce fragmentation

173 recitals
99 articles

- (38) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

human being under the age of 18 years
(article 1 UNCRC)

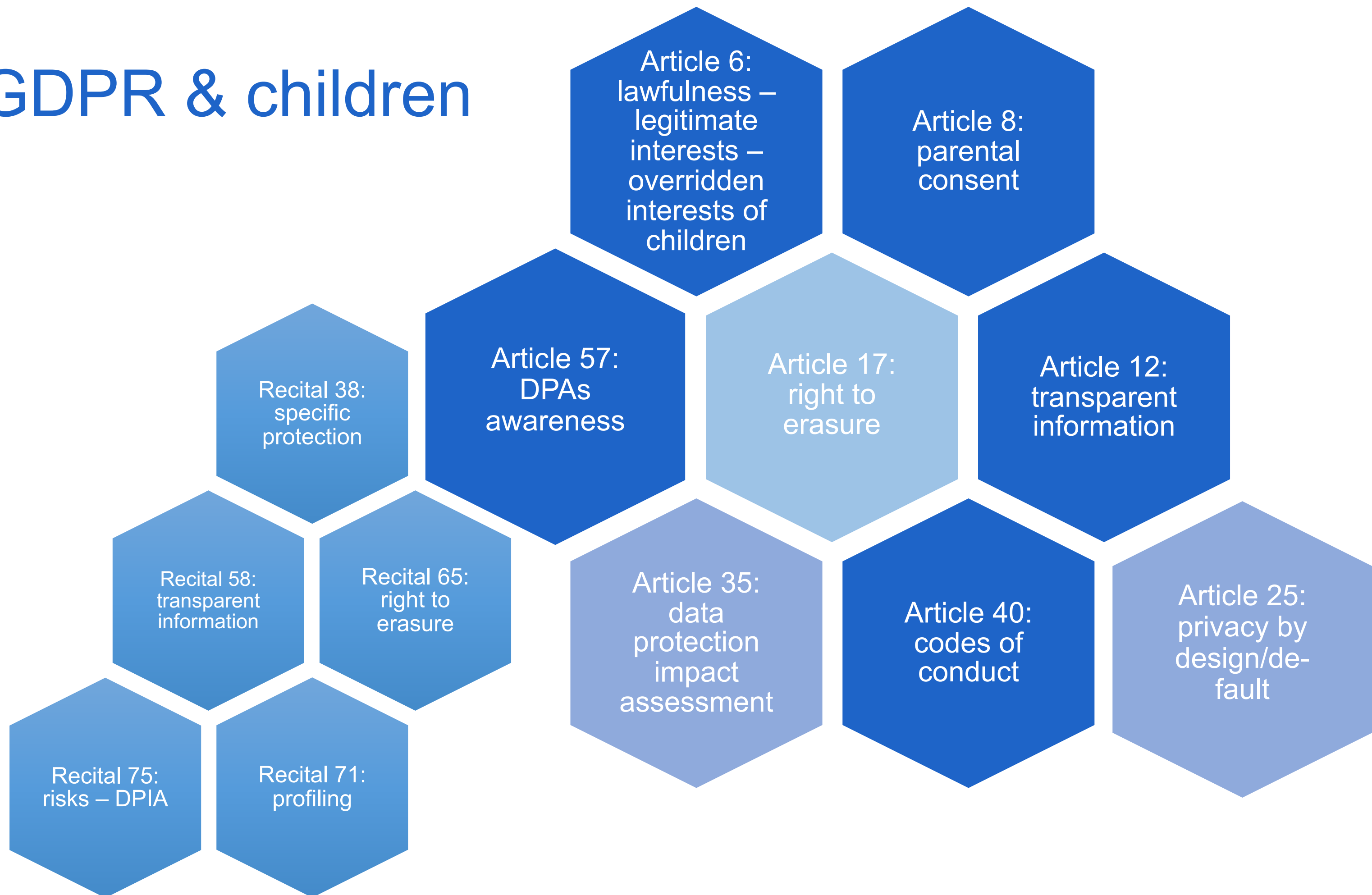


any information relating to an *identified or identifiable* natural person ('data subject')



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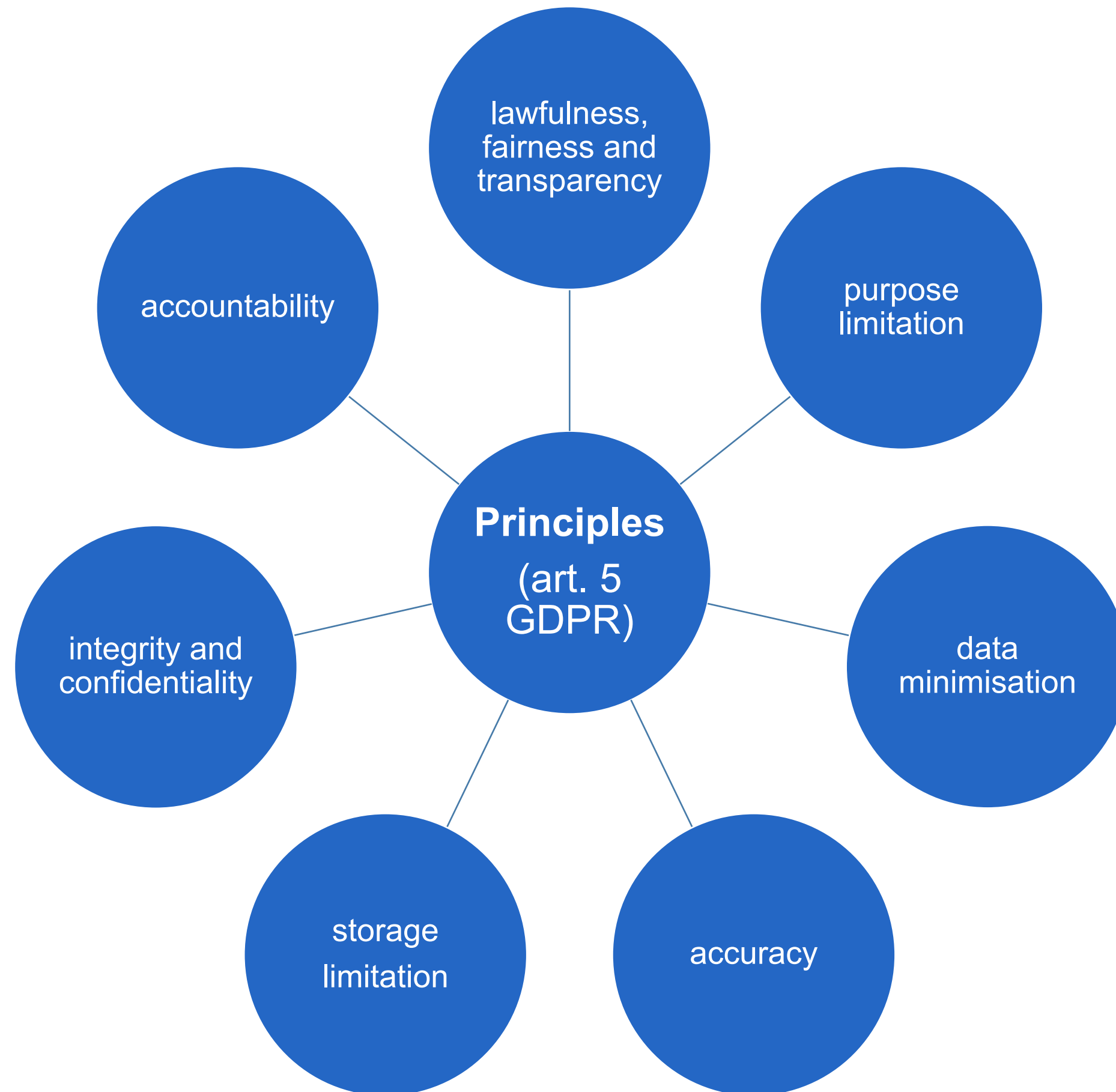
The GDPR & children

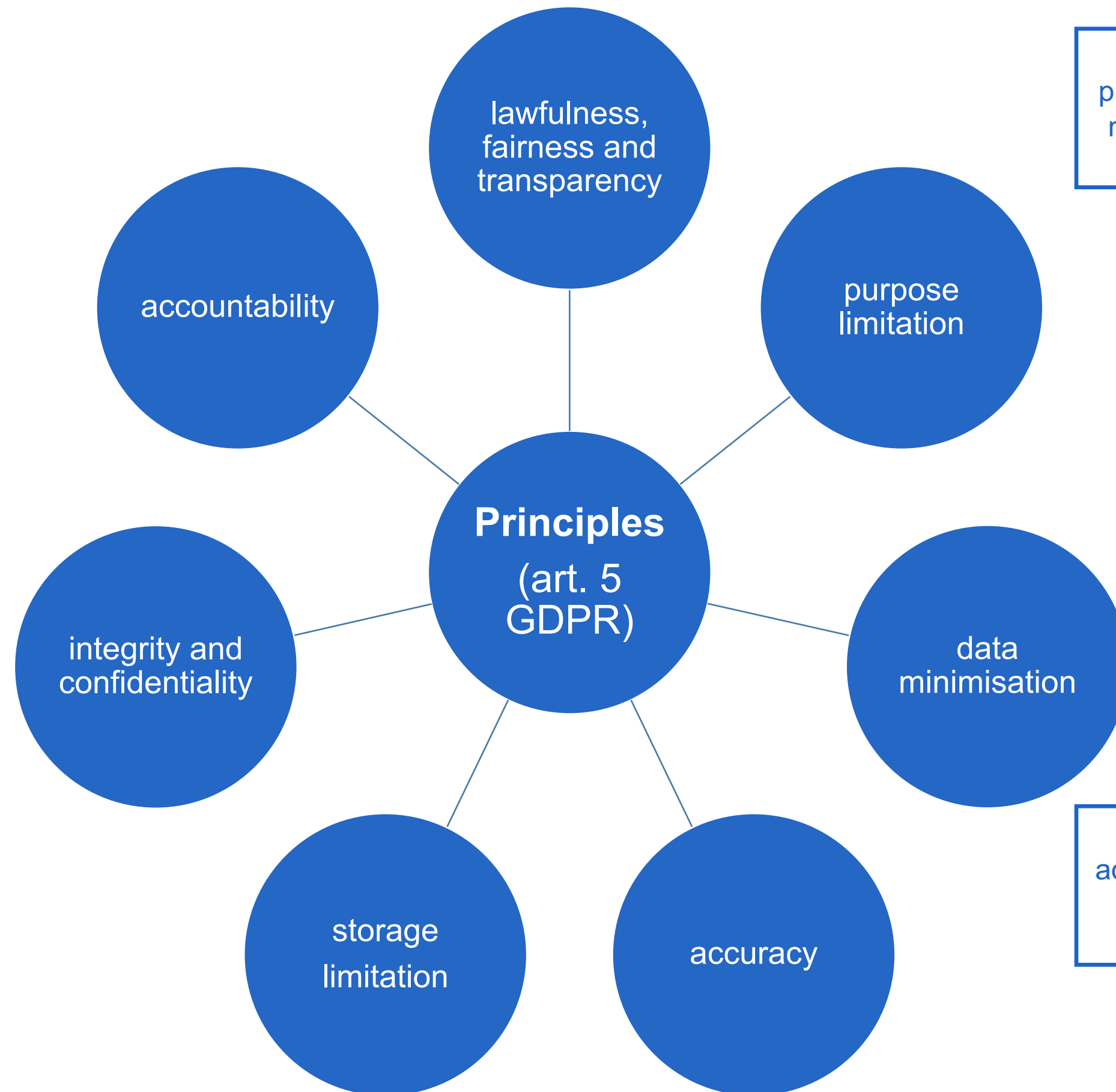


Principles

Data subject
rights

Obligations for
controllers





for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes

adequate, relevant and limited to what is necessary in relation to the purposes

Art. 6: Processing shall be lawful only if and to the extent that at least one of the following applies:

Consent

the data subject has given consent to the processing of his or her personal data for one or more specific purposes

Contract

processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract

Legal obligation

processing is necessary for compliance with a legal obligation to which the controller is subject

Vital interests

processing is necessary in order to protect the vital interests of the data subject or of another natural person

Public interest

processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller

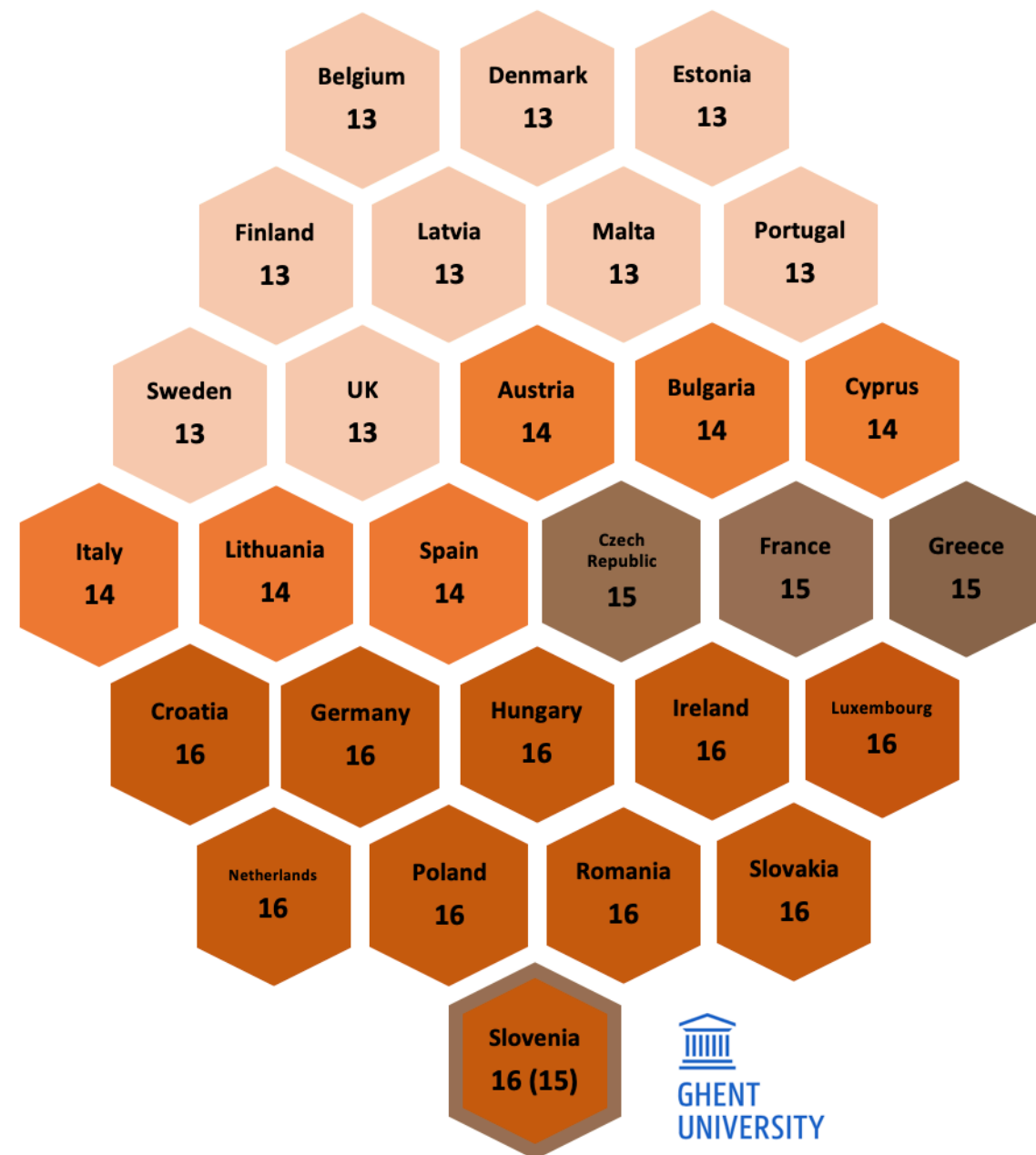
Legitimate interests

processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a **child**.

Art. 6: Processing shall be lawful only if and to the extent that at least one of the following applies:

Consent

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Article 8 GDPR

information society services directly offered to a child

child < (13-14-15-)16

parental consent

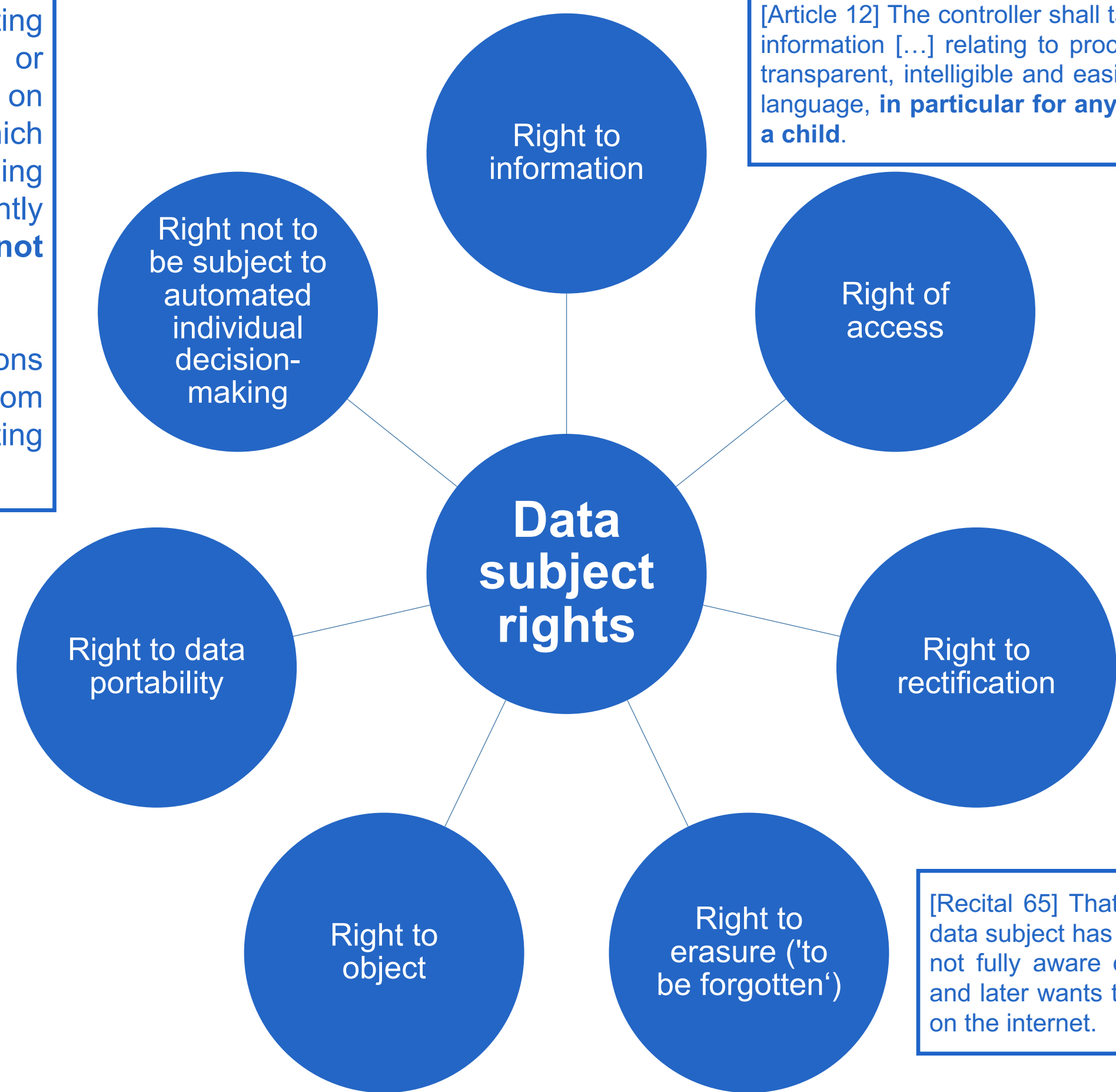
reasonable efforts to verify consent is given by holder of parental responsibility



[Recital 71] Measure evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her should **not** concern a child.

[Article 29 WP] organisations should, in general, refrain from profiling [children] for marketing purposes.

[Article 12] The controller shall take appropriate measures to provide any information [...] relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, **in particular for any information addressed specifically to a child.**



[Recital 65] That right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet.



AVMSD x GDPR = challenges!

GDPR compliant age verification (and other technical measures)

- Processing of personal data for the purpose of age verification should comply with the principles laid down in the GDPR (data minimisation, purpose limitation, fairness, lawful grounds...)
- Age verification should not lead to excessive data processing: usually the only attribute that needs to be known is whether a certain individual is under a certain age (not exact date of birth, not even exact age)
- Use of profiling for determining age?

Avoiding commercial exploitation of children's data

- Data obtained in the context of protective measures (art. 6 + 28b AVMSD) should not be processed for commercial purposes, such as direct marketing, profiling and behavioural targeted advertising
- What about data collected or generated other than for the purpose of protective measures?
- Protect minors from harmful commercial communications, including behavioural targeted advertising itself

Guidelines to respect, protect and fulfil the rights of the child in the digital environment



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57. States should take measures to ensure that children are protected from commercial exploitation in the digital environment, including exposure to age-inappropriate forms of advertising and marketing. This includes ensuring that business enterprises do not engage in unfair commercial practices towards children, requiring that digital advertising and marketing towards children is clearly distinguishable to them as such, and requiring all relevant stakeholders to limit the processing of children's personal data for commercial purposes.

Council of Europe, [Recommendation CM/Rec\(2018\)7](#) of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment

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Avoiding impact on other children's rights

- Certain service providers might exclude children from accessing their services because they feel it is too burdensome to comply with certain obligations, with a potential impact on children's right to freedom of expression, access to information, play and right to development.

AVMSD x GDPR = solutions?

DP-b-D/D

Data Protection-by-Design and Data Protection-by-Default
(article 25 GDPR)

DPIAs

Data Protection Impact Assessments (article 35 GDPR):
take into account full range of children's rights

CoC

Codes of conduct (article 40 GDPR)

A look towards the future:
An integrated approach to the rights of the
child in the digital environment –
Opportunities for NRAs and DPAs

Opportunity 1:

NRAAs & DPAs: talk to each other!

Guidelines to respect, protect and fulfil the rights of the child in the digital environment



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UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

WHAT ARE HUMAN RIGHTS?DONATE

HOMEABOUT USISSUESHUMAN RIGHTS BY COUNTRYWHERE WE WORKHUMAN RIGHTS BODIESNEWS AND EVENTS PUBLICATIONS AND RESOURCES

English > Human Rights Bodies > CRC > GC children's rights in relation to the digital environment

The Committee

Introduction

Membership

Meeting of States parties/Elections

Upcoming elections for all treaty bodies

Basic documents

Convention

OP on Sale of Children

OP on Children in Armed Conflict

OP on a communications procedure

Rules of procedure

COMMITTEE ON THE RIGHTS OF THE CHILD

General Comment on children's rights in relation to the digital environment

The Committee on the Rights of the Child is drafting a General Comment on children's rights in relation to the digital environment.

In March 2019, the Committee invited all interested parties to comment on the concept note of the General Comment. The Committee appreciates the 135 submissions it received from States (29), regional organisations (3), United Nations agencies (2), national human rights institutions and Children's Commissioners (6), children's and adolescent groups (5), civil society organisations (52), academics (19), the private sector (7), and other entities and individuals (12).

The Committee will take into account all submissions when deciding on the content of the draft General Comment. All submissions are published below.

States

Country-specific information

Selecione un paísGO

Meetings and deadlines

Sessions

Calendar of country reviews by treaty bodies

Deadlines for the submission of documentation

Search

Treaty body database

Universal human rights index

Publication

Fact Sheet No.10

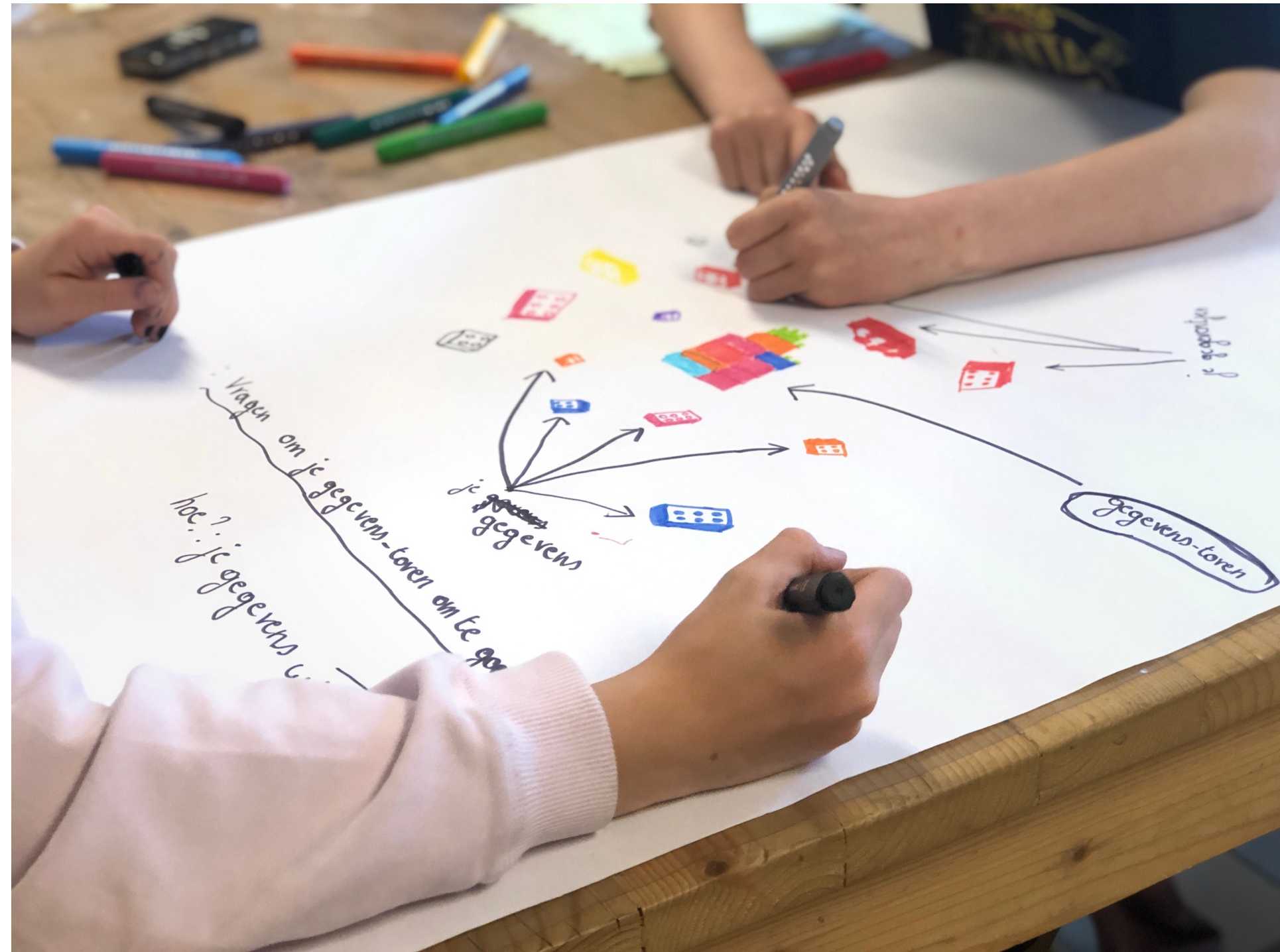
The rights of the child in the digital environment are **interlinked**. Realising those rights necessitates an **integrated** approach which entails **cooperation** between different regulatory authorities and other stakeholders.

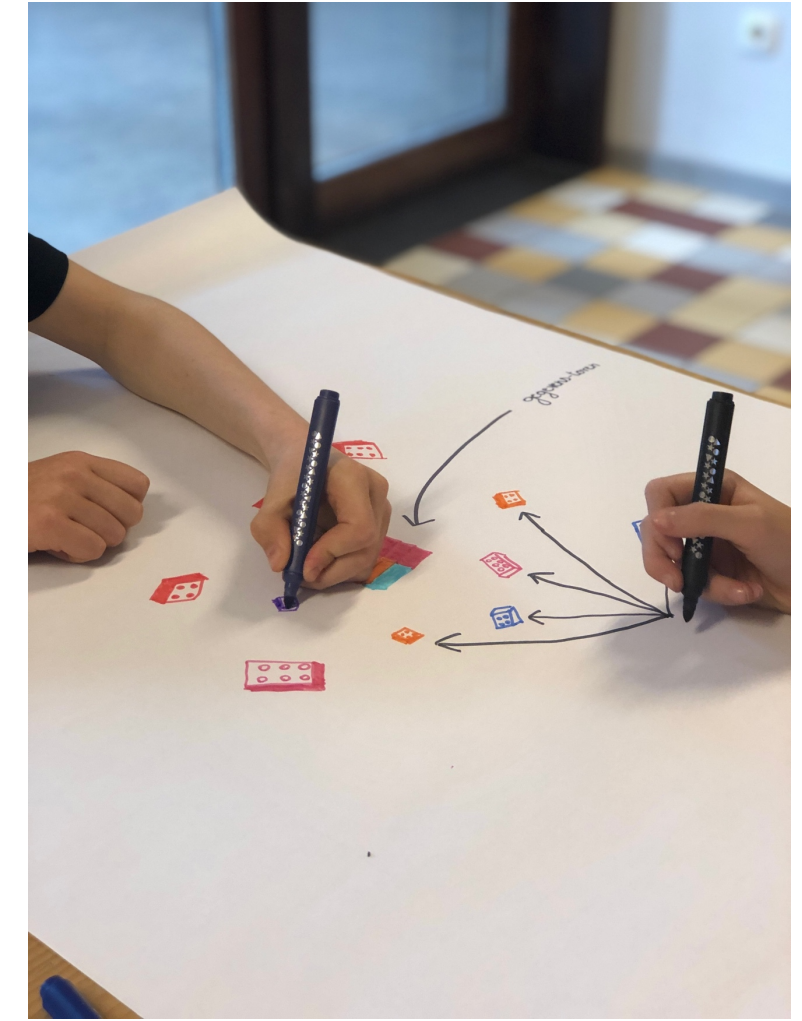
Opportunity 2:

NRAs & DPAs: talk to children!

Co-design workshops with children on their understanding of data collection and processing & child-friendly information formats

- 4 workshops (4 groups at a time)
- 84 children in total
- @ 2 schools in Gent, Belgium
- Age 9-12 years (grade 5 / 6)





Child-friendly information and data / media literacy is **essential**.

Some data collection and processing practices, however, are so complex and opaque that restrictions for certain (esp. commercially exploitative) practices in respect of children are **necessary**.

Regulatory authorities, including NRAs & DPAs, need to take up their **crucial** role in ensuring that the full range of children's rights is respected, protected and fulfilled in the digital environment.

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www.ugent.be
<https://www.ugent.be/re/mpor/law-technology/en>

Do you want to know more about children and data protection?

Follow our research project:

**A children's rights perspective on privacy and data protection in the digital age:
a critical and forward-looking analysis of the
General Data Protection Regulation and its
implementation with respect to children and youth**

<https://www.ugent.be/re/mpor/law-technology/en/research/childrensrights.htm>