

# gesis

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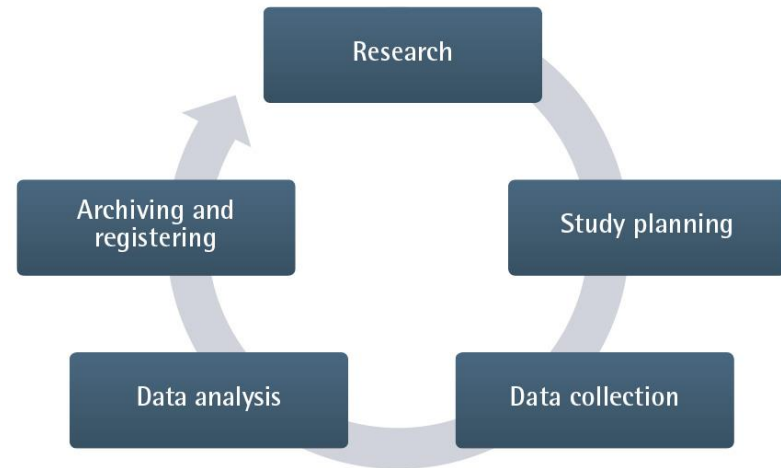
## Comparing the implementation of the GDPR in the EU

The challenges with a focus on social  
science research

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# Guiding question

- Where does GDPR support or restrict social science research?
- Brief overview of main issues



- Founded in 1986, restructured in 2007.
- Covers the entire life-cycle of empirical research.
- Collects and provides data.
  - ▶ **Research ethics and data protection**
- Offers a broad spectrum of research-based services for empirical social research.
- CESSDA Data Services Provider.

## GDPR - characterization

- Directly applicable as of the 25th of May 2018 in the EEA
- Exemptions for the EEA or national legislators to amend GDPR („opening clauses“):
  - ▶ **Positive**: national exceptions and traditions perpetuated
  - ▶ **Negative**: harmonization effort is somehow thwarted
- About half of the GDPR provisions contain opening clauses

# National implementations in general

- Several (comparative) studies on implementation show
  - ▶ „significant differences” (Custers et al. 2017:1)
  - ▶ “co-regulation and cohabitation of Union law and national law” (Roßnagel et al. 2018:10)
  - ▶ „Complicated nature of national adaptations” (Tambou 2019:26)
- Most EEA member states have implemented new laws. But relevant pre-GDPR legislation survives in many countries  
(see Gabel, Hickman 2019 for overview)
- How exemptions were used by member countries varies
  - ▶ some underwent major changes (e.g. Ireland)

# Differences in EU data protection levels (ex. general laws)

[Map of Europe with colour-coded data protection levels per country. Source: DLA Piper (2019)]

# General comments concerning implementation for research

- Positive: Harmonization through direct application
- “Negative”: Majority of EEA Member States impose additional conditions when controllers process personal data in the context of archiving purposes, scientific or historical research purposes or statistical purposes (Art 89)
  - ▶ Nature of these conditions **varies substantially**
  - ▶ Only Bulgaria, Hungary, Liechtenstein, Lithuania and Romania do not impose restrictions

(Gabel, Hickman 2019)

# Social Science Research

- ‚Social research‘ = „*academic* research on topics relating to questions relevant to the social scientific fields, such as sociology, human geography, social policy, politics, and criminology (Bryman 2012:4).”  
[*economics, too*]
- ‚Human subject research‘ with relation to society
- We exclude medical and similar ‚human subject research‘
- Research:
  - ▶ Narrow definition: focus on research
  - ▶ Wider definition: considering research supporting or research restricting matters (e.g. consent from children)



[Fig. 2.1: The process of deduction.  
Source: Bryman (2012), p.24]

[Fig. 2.4: A survey from a process perspective.  
Source: Groves et al. (2009), p.47]

[Fig. 5.2: The (spiral-shaped) model  
of ethnographic research.  
Source: Gobo (2018), p.76]

- No matter which research design,  
common ground:  
collecting data about individuals

# National implementation concerning social science research

Research design elements	Data Protection	National implementations
Topics of research	Special categories of data	All countries apply list of special categories of data; <b>But</b> Denmark imposes additional restrictions on the re-use of sensitive personal data that were originally collected for scientific or statistical studies
Population (e.g. children, employees, individual in need of protection)	Vulnerable populations	<b>No unified situation;</b> e.g. consent by children with varying ages [Relevant because for example discussed within the ESS consortium]

# National implementation ...

Research design elements	Data Protection	National implementations
Getting to the individuals under research (sampling)	Lawfulness of processing (e.g. informed consent); purpose of processing	Most EEA Member States use informed consent as a basis for social research.(*)
Research done for the first time; legal/ethical/funder's requirement	Data Protection Impact Assessment	<b>No unified situation;</b> in most EEA Member States DPIA only required in accordance with provisions of GDPR; e.g. Croatia, Cyprus, Finland, Ireland and Italy require DPIA for processing of personal data for health research purposes; Cyprus, Hungary, Luxembourg, Portugal and Romania also for research

## Other issues

- Austria, the Czech Republic, Denmark, Estonia, Germany, Greece, Ireland, Latvia, Norway, Romania, Slovakia and Spain provide general exemptions to the rights of data subjects under Chapter III GDPR, for example, for scientific, [...] statistical, historical or archiving purposes.
- No unified regulations concerning exemptions from data subjects rights:
  - ▶ right to be provided information (Art. 14)
  - ▶ right to erasure (Art. 17)
  - ▶ right to not be subject to a decision based solely on automated processing, including profiling (Art. 22)

# European Social Survey

- Example of an international comparative research endeavour
- International comparative survey program starting in 2002
- Basis of contact:
  - ▶ “task in the public interest” and
  - ▶ necessary for research and archiving purposes
  - ▶ in accordance with GDPR and national laws.
- Informed consent in all participating countries

# European Social Survey

- Consolidated approach: already high level of data protection before GDPR; update of workings
- Maximum transparency:
  - ▶ Informed consent
  - ▶ Secure handling of data in all phases of collection and preparation
  - ▶ Anonymization of data for publication
  - ▶ Contact information of e.g. DPO
- Role model

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