

EU Digital Laws: Mapping the Interplays with the GDPR

NIS2 Directive: EU General Data Protection Regulation

The Network and Information Security Directive 2 and the GDPR intersect across numerous domains, including incident reporting and transparency requirements around personal data breaches, processing of personal data to ensure the security of network and information systems, and the use of artificial intelligence and other innovative technologies that rely on processing personal data to prevent cyberattacks. Namely, numerous obligations applicable to essential and important entities and others within the scope of NIS2 may require processing of personal data. Such processing must be done in a way that accords with the protections provided by the GDPR.

NIS2

Articles 23(1-2), 23(5-9), 29(1), 30(1-2) and 35(1)

Upon becoming aware of a significant incident, cyber threat or near miss, essential and important entities, as well as other entities, must inform recipients of their services, law enforcement authorities, the public and computer security incident response teams and/or other competent authorities (e.g., data protection authorities).

Article 21 and Recital 121

Essential and important entities may need to process personal data for the purpose of ensuring the security of network and information systems.

Articles 21 and 29 and Recital 51

The use of AI and other innovative technologies to improve the detection and prevention of cyberattacks should comply with the data protection principles of data accuracy, data minimization, fairness, transparency, data security and data protection by design and by default.

Article 28 and Recital 109

Top-level domain name registries and entities providing domain name registration services may need to process personal data to collect, verify and provide lawful access to WHOIS data.

Article 10(7-8) and Recital 45

While exchanging personal data with national security incident response teams or competent authorities of third countries for the purpose of international cooperation, CSIRTs must adhere to the protections for international transfers of personal data under the GDPR.

Articles 31, 34 and 35 and Recitals 108 and 136

When incidents involving personal data breaches occur, competent authorities designated under NIS2 should cooperate and exchange information with GDPR supervisory authorities.

GDPR

Articles 4(12), 33(1), 33(2), 34(1) and 34(4)

Upon becoming aware of a personal data breach, processors must inform controllers; controllers must inform supervisory authorities and data subjects without undue delay.

Articles (6)(1)(c/e), 6(1)(f) and 6(3)

Such processing by important and essential entities may constitute a legal obligation within the meaning of GDPR Article 6(1)(c/e) and/or may be necessary for legitimate interests pursuant to GDPR Article 6(1)(f).

Article 25

Controllers must establish appropriate technical and organizational measures to ensure that, by default, processing is limited to that personal data which is necessary for each specific purpose.

Article (6)(1)(c)

Such processing may constitute a legal obligation within the meaning of GDPR Article 6(1)(c).

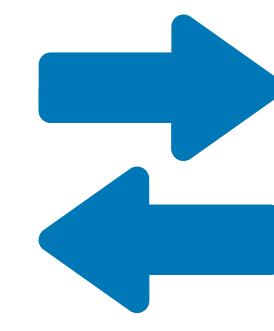
Article 49

GDPR Article 49 establishes the conditions for when transfers of personal data to third countries or international organizations may occur in the absence of an adequacy decision.

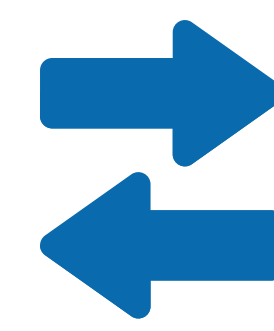
Articles 55, 56 and 58(2)(i)

When a GDPR supervisory authority imposes an administrative fine pursuant to GDPR Article 58(2)(i) for an infringement by an essential or important entity that can entail a personal data breach, competent authorities may not impose an administrative fine for that same conduct under NIS2 Article 34.

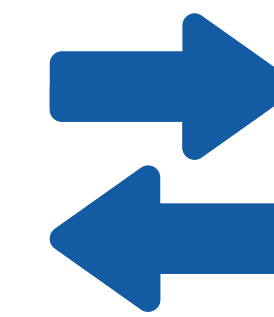
Incident reporting



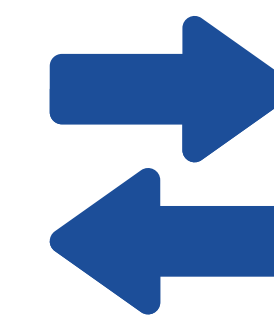
Processing personal data to ensure security of network and information systems



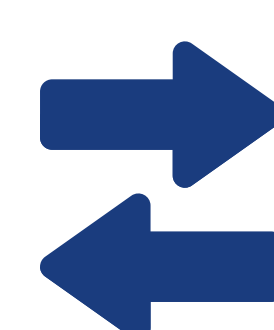
Use of AI to detect and prevent cyberattacks



Lawful access to domain name registration data



Data sharing by CSIRTs



Cooperation amongst supervisory and competent authorities

