



Introduction to joint controllers in large research consortia



What are the limits?

Some Basics

Controller (GDPR, article 4.7)

- ... anyone... which, alone or jointly with others, determines the purposes and means of the processing of personal data.
- Researcher part of a research institution > that institute

Jointly (GDPR, article 26):

- Shall in a transparent manner determine their respective responsibilities for compliance...
- By means of an arrangement (contract)
- The arrangement may designate a contact point for data subjects

Relevance of the questions

- Controllers are each accountable for GDPR compliance
 - Heightened awareness of that accountability
- Decisions of the CJEU in 2020
 - With the close entanglement (inextricably linked) in purposes and means you get joint controllers even though you might not have been aware of that
- The (draft) guidelines of the EDPB
- Large research consortia with many different roles of the partners

Criteria for joint controllership

- A joint decision about purposes and means
- Or converging decisions
 - Complementing each other, having a tangible impact on the data processing
 - Processing wouldn't be possible (or would not happen) without the other
- Additional (in case of doubt):
 - A joint economic interest
- All together:
 - *Close entanglement in purposes and means* of parties regarding data processing
- Assessment is based on the facts behind legal arrangements (if any)

What it does not mean

- One does not become joint controller for all the data processing of the other party
- Only for the entangled processing

Controller1	Joint controllers	Controller 2
Own processing	Entangled processing	Own processing

In research consortia

There will be the proposal to which all parties are committed

- Joint purposes ✓

A consortium agreement which all parties agree on, eventually also a DMP

- Joint means ✓

All parties have a stake that research succeeds, e.g. funding depends on that

- Joint interest ✓

But I will never have access to the data?!

- That is as such not an argument
- You can be controller without having access to the data
- If you have (co)decided about purposes and means

By the way, consequences for federated data processing (e.g., Datashield-like methods)

Claim, goes outside the GDPR ?

Source data, controller		Receiving researcher
Identifiable data	Analyses, anonymisation, results out	Anonymous results of analyses
	Joint controllers: source and receiving researcher if they have both set up the research instead of data source being a mere provider of the data	Joint controllers if source data controller is involved in the analyses and following publication ?

Yet...

- "Jede Konsequenz führt zum Teufel"
- One can also push joint controllers into the absurd with around 150 joint controllers
- What would be the added value
 - for the data subjects
 - for data protection authorities ?



A possible absurd consequence

- A-Z are joint controllers
- Data processing takes place at A (part of)
 - Before data go a central database
- A data breach at A
 - Invitations: letter and envelope were mixed up: P1 gets letter addressed to P2 etc
- B-F also invite but there no breach
- A-Z should notify the SA (sometimes in a completely different MS)
 - Our SA states even if you have arrangements about that in the agreement
 - As contact point in 26 only refers to contact point for data subjects

We need more nuances

- Hence this webinar
- Basis for those nuances could be
- What furthers a doable implementation of the GDPR
- In the light of its overall purposes
- Transparent and fair data processing, accountability
 - Has been translated in many clauses but that is the essence
- Webinar will only concentrate on *when* joint controllers
 - Not on nuances in joint controllership arrangement

Possible demarcation criteria

In (joint controller) 2 of 4 criteria must be met

- Having access to the data
- Having a major say in the protocol (the science)
- Being involved in the data analyses
- Acting as a scientific gateway what research may be performed

Out (not controller)

- No access to the data
- &
- A mere supportive role (ethical, legal advice)
- &/or
- A mere facilitating role to open- up data for research by other partners (in that case perhaps a processor)

Next steps

- Criteria are sort of hypotheses, to be tested, refined perhaps refuted
How ?
- For that the remainder of this webinar
- 3 standard research consortium use cases and their view on the issue
- Your comments
- Next steps ?
 - A whitepaper ?
 - We will ask your advice about that

Thank you for your attention

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