Privacy in times of AI:
How our Data leverages the Future
and the Risks it entails

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Today, 28 January, we celebrate the European Data Protection Day (outside Europe it is called 'International Data Privacy Day'). The celebration of this day, this year for the 19th time, aims in particular to emphasise the growing importance of safeguarding privacy in an increasingly digital world, to promote the protection of personal data and to provide a moment to reflect on the challenges and opportunities that the processing of personal data represents in our lives.

Data protection is at the forefront of attention, shaping legal discussions and challenging legal experts. In turn, the emergence of artificial intelligence (AI) is profoundly transforming society, promising advances in various sectors such as health, transport, security and financial services.

The processing of personal data by AI is fundamentally based on analysing large volumes of data and then using it essentially to train language models (Large Scale Language Models - LLMs), create new content (generative AI), define profiles and automate decisions. As a result, personal data has become the 'fuel' that drives the evolution of AI. This process has led to personal data being seen as commodities that can be traded for economic value. This technological (r)evolution raises pressing questions and has potentially major impacts on privacy and the protection of personal data.

The risks are not limited to the possibility of privacy violations due to the possible intrusion into the private lives of data subjects. In fact, the violation of the right to the protection of personal data can lead to the violation of other personality rights, such as the right of honour, good name, moral integrity, image, freedom and informational self-determination (the latter essentially through the boxing - informational manipulation - that AI algorithms allow). In addition, the use of automated decision-making can lead to a violation of the fundamental right to equality, due to the possibility of discrimination that can result from analysing personal data based on "prejudices" present in the data used to train AI systems, which could negatively impact certain individuals or groups.

Understanding the legal bases for processing data using AI is a complex issue too. With regard to consent, the question remains as to which criteria define whether consent is being given in an informed manner (in accordance with Recital 32 and Article 7 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, 'GDPR'), i.e. whether users really understand how their data is used by AI. The truth is that when a user accepts terms and conditions or browses a website, their data can be collected and used to train AI models. However, few users are aware of the scope or consequences of this use.

GDPR, in force since 2018, is the main "mechanism" for combating and mitigating these risks. Whatever the processing of personal data in question, the GDPR must be complied with, in particular:

- Respect strict principles laid down in this Regulation, and AI systems must be developed and implemented with clear principles of transparency, explainability and accountability;

- The processing of personal data by AI must be based on one of the lawfulness fundamentals of Article 6 of this Regulation, in order for the processing to be lawful.

Furthermore, the recently approved Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June2024 (AI Regulation), which establishes harmonised rules on artificial intelligence,

aims to establish a regulatory framework for the development and use of AI systems, with a focus on the protection of fundamental rights, including data protection.

In addition to the GDPR and the AI Regulation, there are global guidelines that seek to establish ethical limits for the use of AI. For example, the European Data Protection Board has published guidelines and opinions on the subject. Practical solutions that add to the normative protection are also emerging - for example, the use of techniques that make it possible to train AI systems without directly exposing personal data; and educating users about the impact of their digital choices and giving them real control over their data.

The potential of AI to transform society is undeniable, but this transformation must comply with personal data protection standards and be guided by solid principles of ethics and privacy. The occasion of this European Data Protection Day is an invitation to everyone - businesses, legislators and citizens - to reflect on how we can create a future where innovation and privacy coexist in harmony. The future is in the data, but it's up to us to decide how to shape it.

In this context, GPA has been informing its clients and other stakeholders on these matters, providing constant updates on privacy and data protection issues.

For any further developments, or more information on this subject, please contact the Data Protection Team of GPA Law Firm, which can be reached at the following e-mail address: gpa@gpasa.pt.

For more information on Data Protection training courses, please contact the GPA Academy at gpacademy@gpacademy.pt.

This News Flash was drafted by GPA Law Firm's Data Protection Team.