

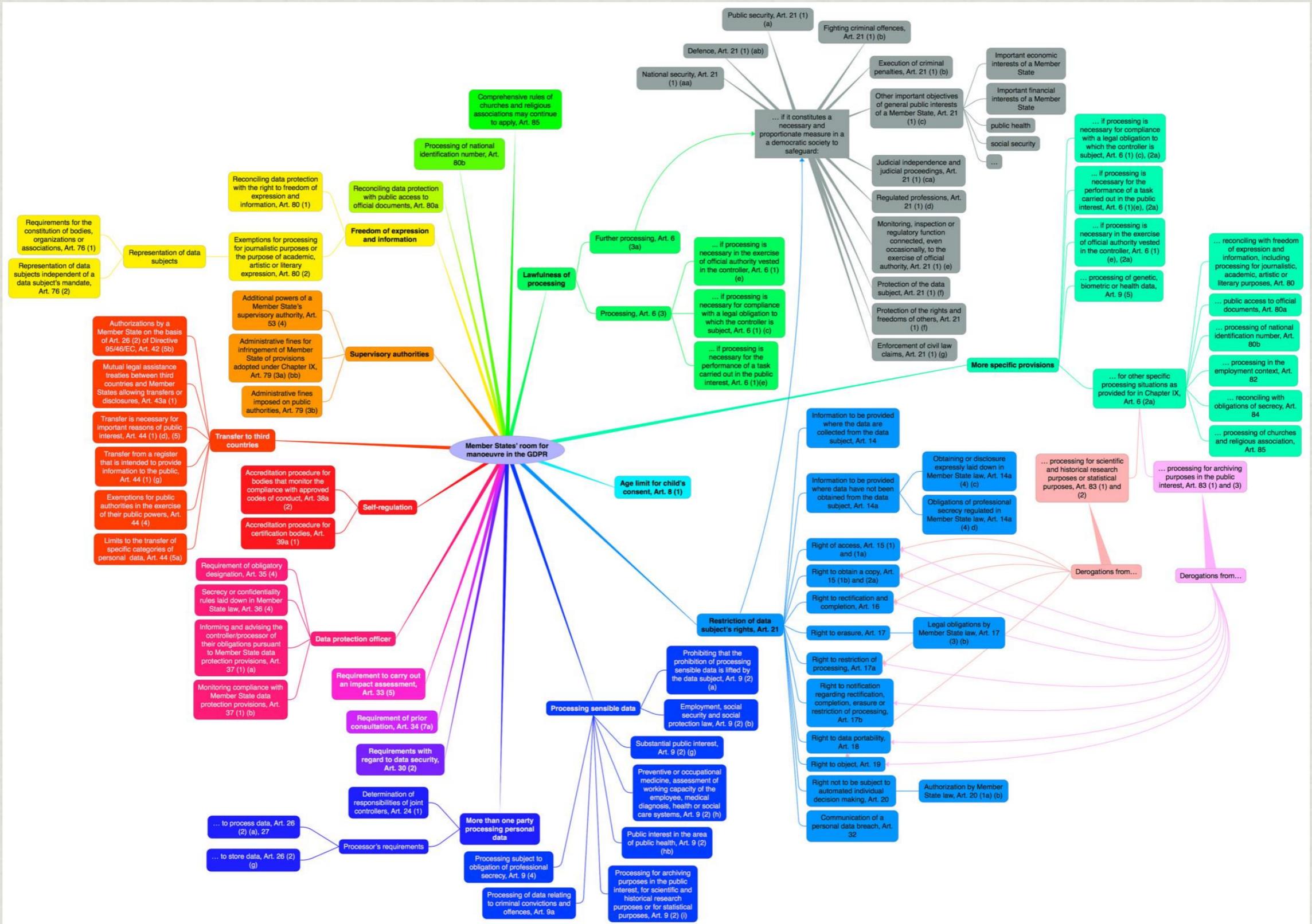
Implementation of GDPR: consistency, flexibility, guidelines

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**PRIVACY
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A Reg or a Di-reg?

- * More of a hybrid between a Regulation and a Directive
- * Contains over 50 articles which allow Member States wiggle room when implementing
- * No longer a predictable regime across the 28 member states
- * How can we ensure that some of the Member States will not enact a “GDPR lite”?



Winfried Weile's Mind Map (German Federal Ministry of the Interior)

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- * So who is responsible for issuing guidance – national authorities, EDPB?
- * When does the process to ensure consistency kick in?
- * What about mixed cases – national laws with cross-border effect?
- * Or will all these be decided – eventually – by the courts?

So we set to work

- * An EDRi team analysed the “flexible” articles
- * Highlighted the most problematic:
 - * Capable of undermining all basic rights
 - * Or potential impact on the digital single market
- * Here are three important examples

Research and sensitive data (Art 9(2)(j))

- * Concern: may create serious loophole in the protection of very sensitive data and lead to serious abuses
- * Risk of such data also obtained for commercial research purposes.
- * We recommend:
 - * EDPS to issue clear/detailed guidance
 - * Not include commercial research purposes as exception for consent

Restrictions on data subject rights (Art 23)

- * Concern that this article can render most of the Regulation null and void, including the basic principles; excessively vague and permissive terms.
- * Can be used to exempt companies from their obligations re data subject rights
- * We recommend:
 - * MSs must inform the public how they use this and which laws apply (info held e.g. by EDPB)
 - * DPAs/EDPB – detailed guidelines on how restrictions to be interpreted

Representation of data subjects (Art 80)

- * Concern that NGO's rights for enforcement in some countries but not others will create inequalities in terms of rights
- * NGOs can still act on behalf of an individual, but the purpose of class action is to avoid remedy only for one individual when many are affected
- * NGOs already deal with complaints re consumer protection in many countries, and most effectively
- * We urge all authorities (EDPS, EDPB, DPAs!|) to encourage governments to support enforcement actions by NGOs – an extra support to overworked authorities and deterrent against infringement for controllers.

Conclusion

- ✱ A number of 'red-flagged' articles containing flexibilities should be addressed by common guidance or actions
- ✱ Early EDPB action on such detailed actionable guidance is crucial, and before 2018