

DIGITAL ANALYTICS

A MUCH NEEDED LEGAL PERSPECTIVE



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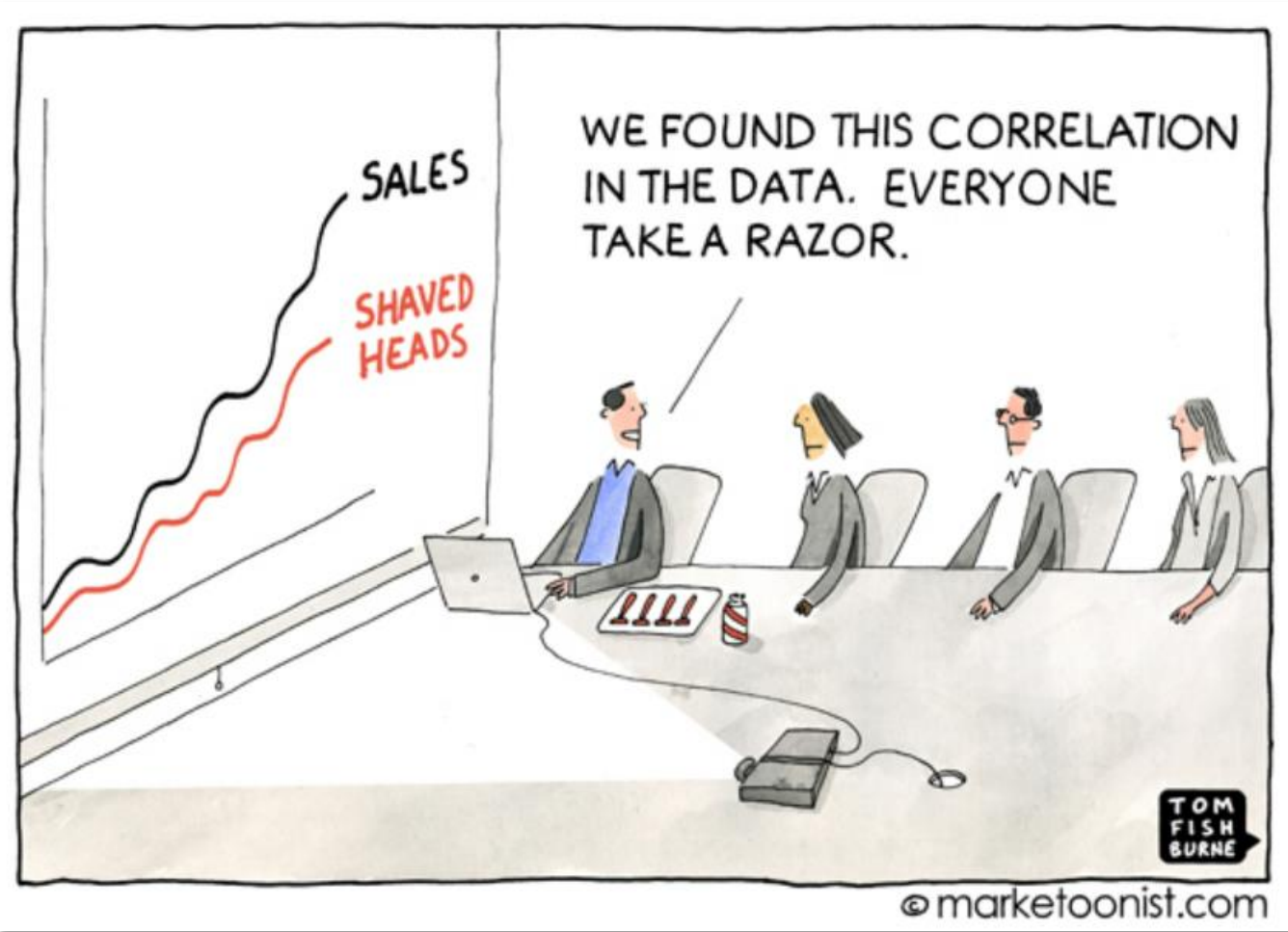
Legal Counsel

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Agenda

- Introduction
- Legal basics: in a nutshell
- Legal updates: data transfers
- What to do?



Legal Basics

in a nutshell



AUTORITEIT
PERSOONSGEGEVENS

Data Protection Authority

Autoriteit
Consument & Markt



Competition, consumer rights
and telecommunication



MORE SPECIFIC



GDPR

General Data Protection Regulation



7 key principles

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation
- Accuracy
- Storage limitation
- Integrity and confidentiality
- Accountability

GDPR Legal Basis



Consent



Vital interests



Legitimate interest



Legal obligation



Performance of a contract



Public interests

GDPR Legal Basis



Consent



Legitimate interest



Performance of a contract

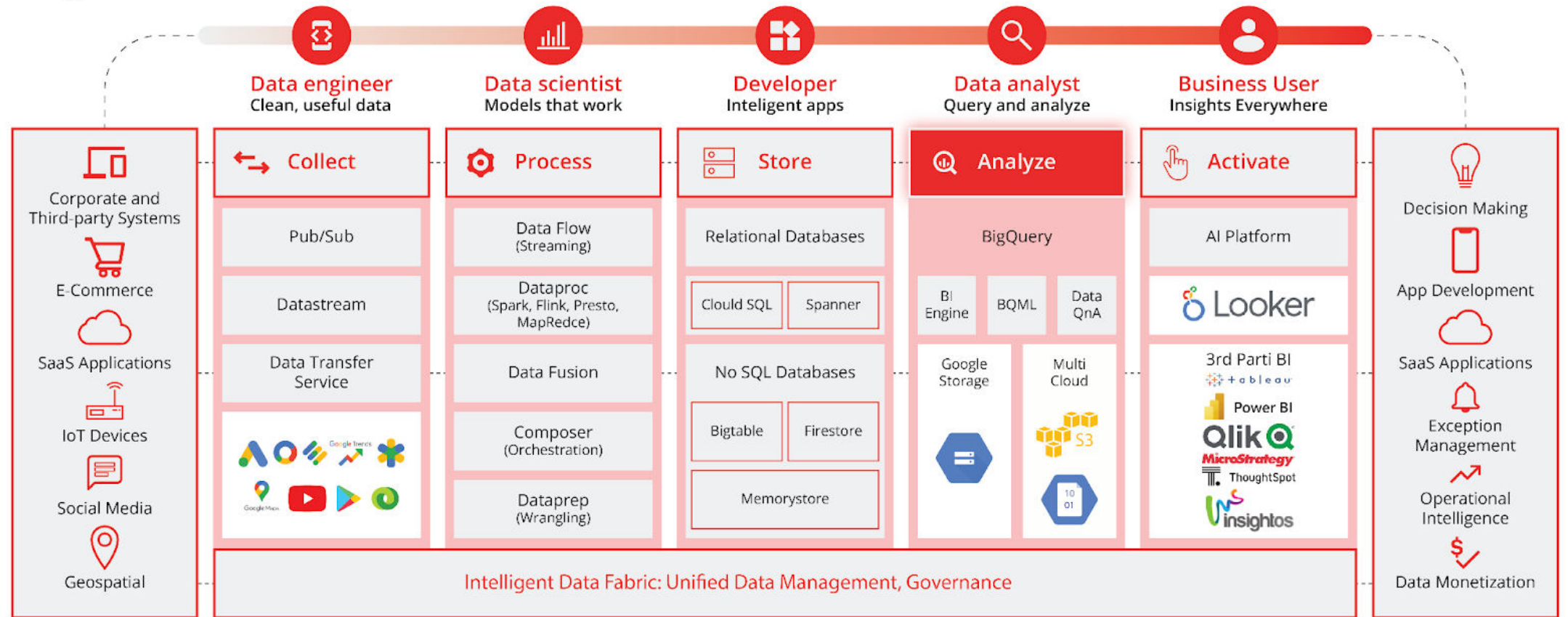


Purpose limitation & Data minimisation

Personal data shall be:

- collected for **specified, explicit and legitimate purposes** and not further processed in a manner that is **incompatible** with those purposes.
- **adequate, relevant and limited** to what is **necessary** in relation to the purposes for which they are processed.

Integrated data cloud platform



Information = key

Starting point: provide information at the same moment you're collecting the personal data

- **Collection of (first party) data for analytics**

Cookiebanner, Cookie statement, Privacy statement

- **Building profiles**

Privacy statement

- **Usage for marketing purposes**

Privacy statement or at a fill-in form

Right to be informed:

What information do you need to provide the data subject?

- Which legal basis
- Data retention periods (or at least how you determine them)
- (if) Legitimate interest, which interest does your organisation have
- (if) Contact details of the DPO
- (categories of) Third Parties
- Third Countries
- Extra rights
- Right to withdraw consent
- Right to complain
- Obligation to provide information for the performance of a contract
- Automatic personal data processing
- Source of the data
- Identity data controller
- Purpose of processing
- Right on access and rectification
- Right to object and erasure

Further processing

Possible, as long as:

- The original processing is based on **the performance of a contract, legitimate interests** or ~~vital interests~~
- The new purpose is **compatible** with the original purpose, depending on the following factors:
 - a) **the link** between the purposes
 - b) **the context** in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
 - c) **the nature** of the personal data
 - d) the possible **consequences** of the intended further processing for data subjects
 - e) the existence of **appropriate safeguards**, which may include encryption or pseudonymisation.

ePrivacy Directive

‘Privacy and electronic communications directive’



Definition of cookies

Article 5 paragraph 3:

“Member States shall ensure that **the storing of information**, or the **gaining of access to information already stored**, in the **terminal equipment** of a subscriber or user...”



Main rule: consent and providing information

Article 5 paragraph 3:

“...is **only allowed** on condition that the subscriber or user concerned has given his or her **consent**, having been provided with clear and **comprehensive information**, ..., about the purposes of the processing.”



- Free, Freely given
- Informed
- Unambiguous
- Specific
- Prove (accountability)
- Withdrawable (as easy as giving consent)
- Withdrawal of consent or not giving consent may not have negative consequences

Main rule: consent and providing information

Valid consent in the GDPR:

“Consent should be given by a **clear affirmative act** establishing a **freely given, specific, informed** and **unambiguous** indication of the data subject’s agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement.

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Necessary



Preferences



Statistics



Marketing

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Exception:

This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or **as strictly necessary** in order for the provider of an information society service explicitly requested by the subscriber or user **to provide the service**.

> Necessary and functional cookies

Exception:

In some member states, no consent is needed:

“Legitimate Interest if the cookies are intended to measure the **effectiveness** of a service (like a website). But only if the processing has **little or no impact** on the data subject.”

> Analytical & Affiliate cookies

We use cookies

Accept

Cookie Policies



We use cookies

Accept

Reject all

Cookie Policies

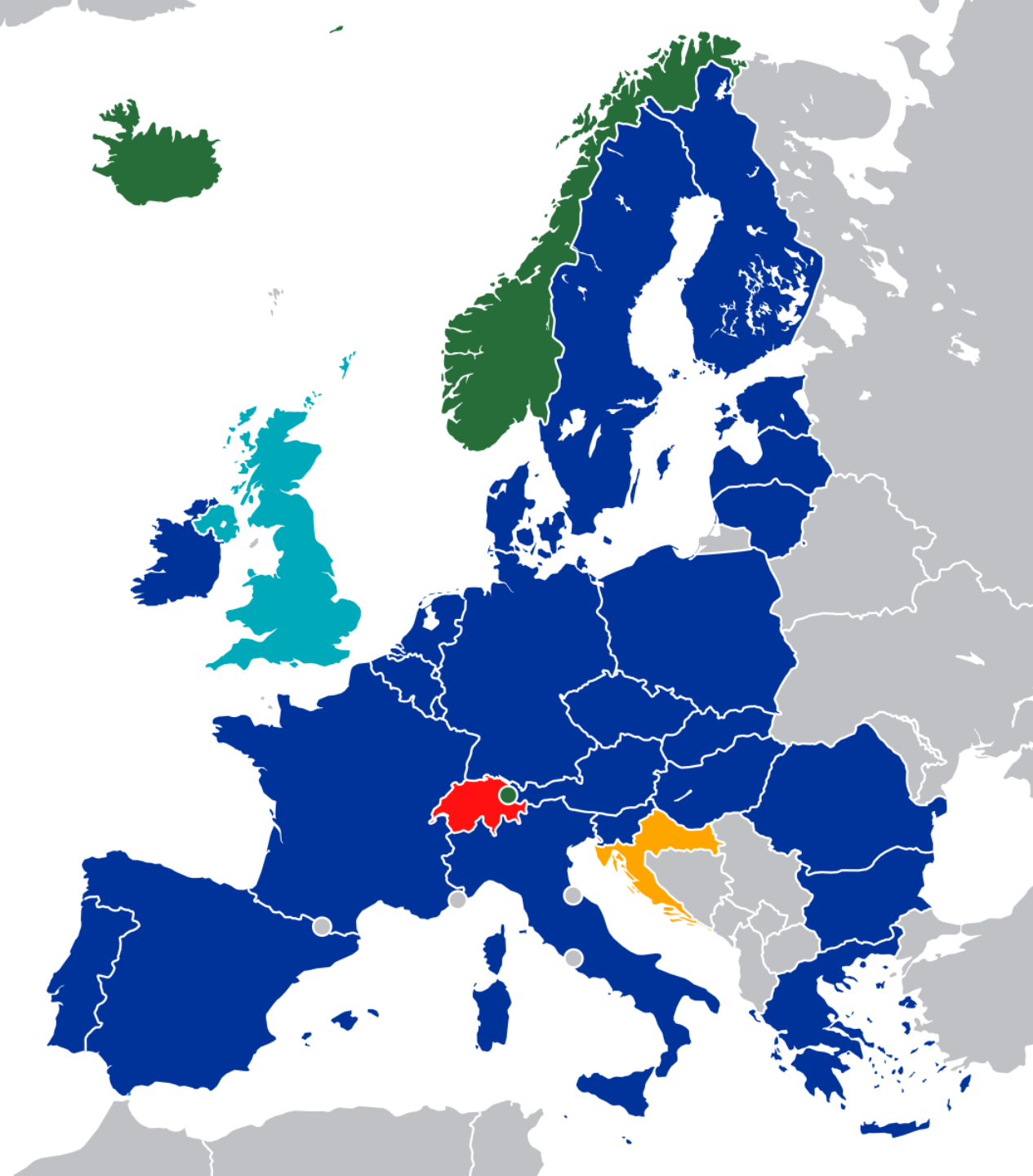


Legal Updates

Data Transfers

Data transfers

- Make sure there is **'an adequate level of protection'** when transferring data outside the EEA
- **Appropriate safeguards** are needed if there is no adequate level of protection



Schrems II (2020) CJEU

Privacy Shield doesn't provide adequate level of protection:

- US legislation on national security creates limitations
- European citizens can't empower their rights (under the GDPR) in the US



COUR DE JUSTICE
DE L'UNION
EUROPÉENNE



Austrian DSB: Use of Google Analytics violates "Schrems II" decision by CJEU.

2 years later

- Multiple decisions of European DPA's
 - Germany, Portugal, Austria, Spain, Italy, Norway, France, Denmark
 - Dutch DPA finished investigation, we're waiting on the decision
 - **Important:** not just Google Analytics
- Political solution? Trans-Atlantic Data Privacy Framework
- Still: a lot of uncertainty and tension in the sector



Google Analytics

Main issues:

1. Despite the technical measures (like Anonymize IP) personal data is transferred outside the EEA using Universal Analytics.
2. The contractual (SCC's) and organizational measures do not (effectively) restrict access to personal data by national security services
 - In combination with Schrems II: violation of GDPR in specific circumstances



Google Analytics 4

Solution for main issues:

- In GA4 individual IP-Adresses are no longer stored
 - IP Geo Location: granularity down to city level
- Data collection finds place on EU-servers

Other privacy related features:

- Data retention periods are set to 2 or 14 months
- Personal data can be erased on individual level
- Google signals can be turned of per region

What to do?

Takeaways

1. Check your cookiebanner (on consent and information)
2. Check your privacy and cookie statement
3. Get a lawyer involved from the start, who can think along with the analytics & measurement strategy
4. Start to ask: what (personal) data do we really need?
5. Stay up to date on tools you use for your strategy

Legal Masterclass

Questions?

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