

Experience of UNIGE since entry into force of GDPR – how is Université de Genève (UNIGE) tackling the practical issues?

BESTPRAC WG3 Meeting

**Tallinn University of Technology, Tallinn, Estonia,
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About Université de Genève (UNIGE)

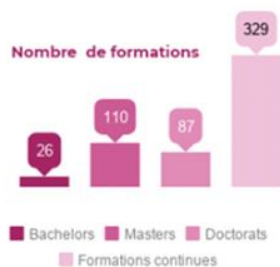
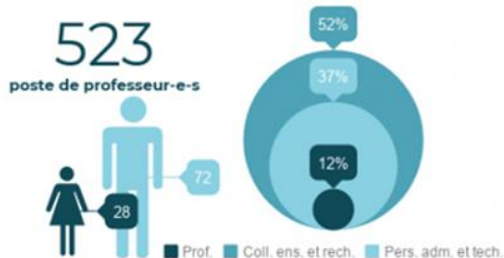
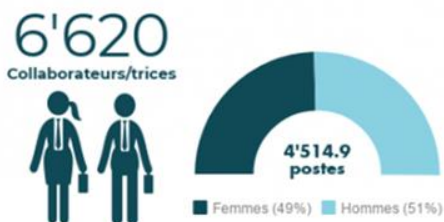
- Founded in 1559 by Jean Calvin
- 2nd largest University of Switzerland
- Self-governing public body under supervision of the Government of the Republic and Canton of Geneva
- Domains of excellence include: life sciences, physics of elementary particles, and astrophysics

L'UNIVERSITÉ DE GENÈVE EN 2018

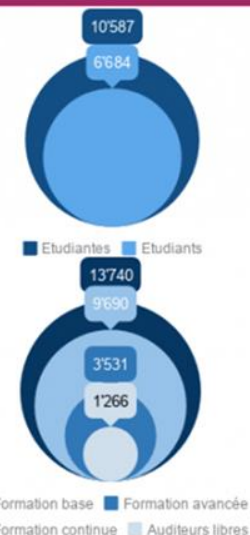
59
Rang mondial
(Shanghai)

814
Ressources financières
en mio. de CHF

9 Facultés
37% d'étudiant-e-s
internationaux
152 pays
représentés
13 Centres
interfacultaires



17'271
Etudiant-e-s
(form. base + avancée)



4'444
Diplômé-e-s
(form. base + avancée)



Data protection legal framework of Switzerland

- Switzerland is a federal state
- State powers are divided between federal government and 26 cantons
- Principle of subsidiarity

Data protection legal framework of Switzerland

- Data processing by private companies and federal bodies
- Data Protection Law (DPA) and Ordinance for the application of the DPA (ODPA)
- Revision of the DPA is ongoing

Data protection legal framework of Switzerland

- Data processing by cantonal or communal bodies
- Cantonal laws
- Geneva: Loi sur l'information du public, l'accès aux documents et la protection des données personnelles (LIPAD)

Data protection legal framework of Switzerland

- Federal Data Protection Commissioner
<https://www.edoeb.admin.ch/edoeb/en/home.html> (in English)
- Cantonal Data Protection Commissioner
<https://www.ge.ch/ppdt/> (in French only)
- Recommendations, guidelines, advice, FAQs and templates

Exceptions and specific laws for research

- Federal level: art. 13 DPA
- Justification through consent, overriding private or public interest, or by law
- Overriding interest in particular if data is processed for research, planning and statistics purposes, and published in a manner that data subjects cannot be identified

Exceptions and specific laws for research

- Cantonal level: art. 41 LIPAD (processing of data for general purposes)
 - Public institutions are entitled to process personal data for general statistical, scientific research, public policy planning or evaluation purposes, for their own account or that of another public institution having the legal mission, under a number of cumulative conditions (necessity for purposes, destruction or anonymization, non-communication, publication excludes the possibility of identifying subjects, etc)

Exceptions and specific laws for research

- Processing of sensitive personal data or involving establishment of personality profiles requires prior governmental authorization
- Specific federal and cantonal laws to address research with humans, clinical studies, participation of Switzerland in research and innovation framework program of EU, etc.

GDPR application from the Swiss perspective

- Not directly applicable in Switzerland (no EU member country)
- However, large application and extraterritoriality of GDPR (art. 3)
- Relevant criteria include intention to offer goods and services in EU, monitoring of behavior in EU

GDPR application from the Swiss perspective

- Examples of situations that do not involve application of the GDPR from the perspective of a Swiss controller (UNIGE)
 - EU citizens in Switzerland
 - Subcontracting to a subcontractor in the EU (GDPR applies to EU subcontractor, but not to the Swiss entity)
 - Treatment of EU citizens in a Swiss hospital
- Indirect application of GDPR in case of subcontracting by an EU entity to a Swiss entity

GDPR application from the Swiss perspective

- Research involving the processing of personal data
- Processing covers any action that uses personal data for research purposes
- In the context of European R&I framework programs:
Adequacy Decision issued by the EC :
https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en
- Transfer of data to Switzerland is assimilated to intra-EU data transfer, no additional safeguards needed

GDPR implementation at UNIGE – Roles and responsibilities

- Researchers: controllers and/or processors
- Possible issues when processing is subcontracted
- Research Services provides advice and institutional coordination
- Information security team in charge of technical aspects

GDPR implementation at UNIGE – Roles and responsibilities

- External DPO
- Researchers contact data protection focal point at Research Services
- Focal point evaluates request (“gatekeeper”), and submits to vice-rector for research for decision
- Focal point provides guidance to researchers, and interacts directly with external DPO

GDPR implementation at UNIGE – Support for researchers

- Consolidation of institutional guidelines and regulations (ongoing)
- Research Data mini-website in French and in English
- In-house trainings and lectures
- Data management plan (DMP) reviewing
- Toolkit for researchers (under development)

GDPR implementation at UNIGE - H2020 – Ethical clearance

- Whenever possible, UNIGE choses self-regulation
- Provides its internal data protection policy and related other policies (Information security, research data management etc)
- Refers to the Adequacy Decision
- IT department explains technical security measures for data storage, access etc
- Following this approach, UNIGE received ethical clearance for two consecutive ERC Grants (SSH, collecting of sensitive data trough surveys)

GDPR implementation at UNIGE - H2020 - Cost eligibility

- Cost of external DPO can be eligible as other direct cost (if foreseen at the proposal stage)
- Ethical review before the project starts, but costs are eligible only after project has started

GDPR implementation at UNIGE – Subcontracted processors based in the USA

- Swiss authorities recognize USA as a country offering an adequate level of data privacy
- What about surveys for H2020 projects hosted by US companies?
- Processing at an EU data center should be specifically requested
- Addendum whereby the subcontractor stipulates to apply the GDPR should be specifically requested

GDPR implementation at UNIGE – Current situation

- Work in progress
- UNIGE is currently evaluating its current data protection policies and procedures
- Procedures are continually adjusted to new development
- Main objective: self-regulation, rather than external DPO

GDPR implementation at UNIGE – Conclusions

- Do not hesitate to ask EC ethics officers for clarification, and to argue your institutions' point of view (Adequacy Decision for Switzerland)
- For institutions in non-EU countries it is key to have strong institutional data protection policies and processes
- When appointing an external DPO, it is important to select someone with research related experience
- Close collaboration between research services, IT security and legal affairs is a must (internal task force)

Thank you

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