

DPO FORUM LUXEMBOURG

IS CONSENT A CORNERSTONE OF DATA
PROTECTION?

Aïssatou SARR, Data Protection Officer at Lombard International Assurance
Part of Utmost GROUP

A WEALTH *of* DIFFERENCE

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WEALTH SOLUTIONS

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SPEAKER PRESENTATION

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Aïssatou SARR

Data Protection Officer

at Lombard International Assurance part of Utmost Group

- 11 years of experience as DPO
- Master Degree on Corporate and Business law
- Master Degree on Data Protection Officer
- Master Degree on Control, Exploitation and Intelligence of Data
- Certified CIPM and CIPP/E
- Lecturer for
 - the University of Luxembourg,
 - the University of Dakar in Senegal
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- Author of the book : *“Quel équilibre entre la protection des données et la santé ? : Comment respecter la réglementation sans limiter le développement de la recherche clinique”*.



CONTEXT

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How many times the term Consent appears in the General Data Protection Regulation ?

72

IMBALANCE

Imbalance in the way Data Subjects' personal data was protected in Europe.

EMPOWERMENT

The aim of the GDPR is to re-empower individuals by giving them control over how their personal data is processed.

RELIABILITY

The definition and validity of consent in the GDPR becomes a reference for other regulations or laws such as the e-Privacy Directive.

INFORMED CHOICE

The ability to have clear and specific information on how personal data is processed.



DEFINITION AND VALIDITY OF THE CONSENT

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Article 4.11 of the GDPR:

'Consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

The Data Controller bears the burden of proof

Freely given

Specific

Informed

Unambiguous

Clear affirmative action

Written, electronic or oral statement

Intelligible and easily accessible form

clear and plain language

should not contain unfair terms

beware of imbalance between the data subject and the controller



CONSENT IN THE REGULATION

CONSENT IN THE REGULATION

CONSENT AS LEGAL BASIS

The data subject has given consent to the processing of his or her personal data for one or more specific purposes;

CHILD'S CONSENT IN RELATION TO INFORMATION SOCIETY SERVICES

If the processing is relying on CONSENT in relation to the offer of information society services directly to a child,

the processing of the personal data of a child shall be lawful where the child is at least 16 years old.

Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

CONSENT FOR TRANSFER OUTSIDE OF EU

Possibility for transfers in certain circumstances where the data subject has given his or her explicit consent,

where the transfer is occasional and necessary in relation to a contract or a legal claim,

regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure, including procedures before regulatory bodies.

CONSENT IN THE REGULATION

CONSENT FOR SCIENTIFIC RESEARCH

Often the purpose of the clinical research is not fully identifiable at the collection.

The Data subjects should have the opportunity to give their consent only to certain areas of research or parts of research projects to the extent allowed by the intended purpose.

CONSENT AS EXCEPTION FOR SPECIAL CATEGORIES OF DATA

The data subject has given explicit consent to the processing of special categories of personal data for one or more specified purposes,

except where Union or Member State law provide that the prohibition may not be lifted by the data subject;

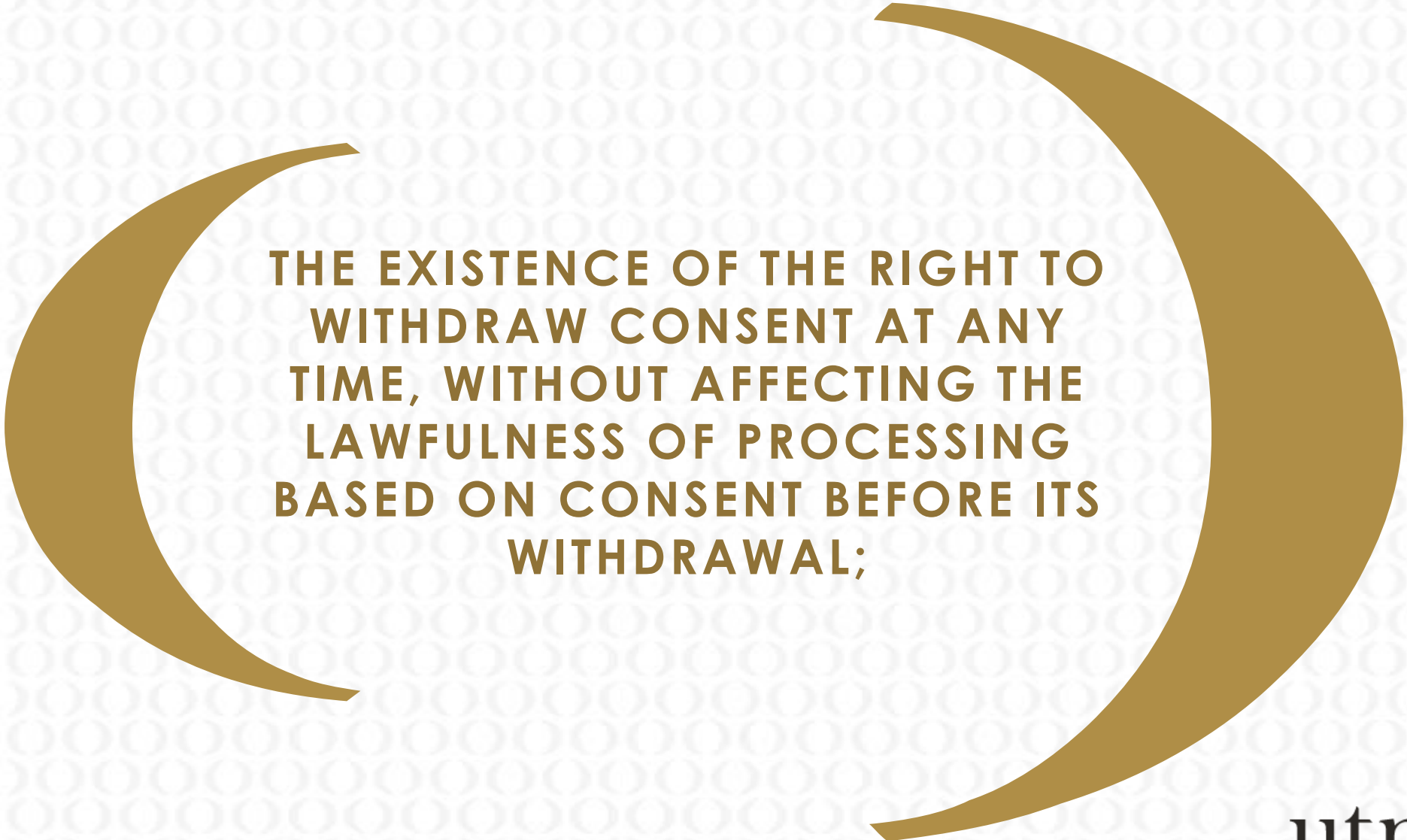
CONSENT AS A RIGHT

Consent appears in several rights as :

- Right to erasure ('right to be forgotten')
- Right to restriction of processing
- Right to data portability
- Automated individual decision-making, including profiling



WITHDRAWAL OF CONSENT



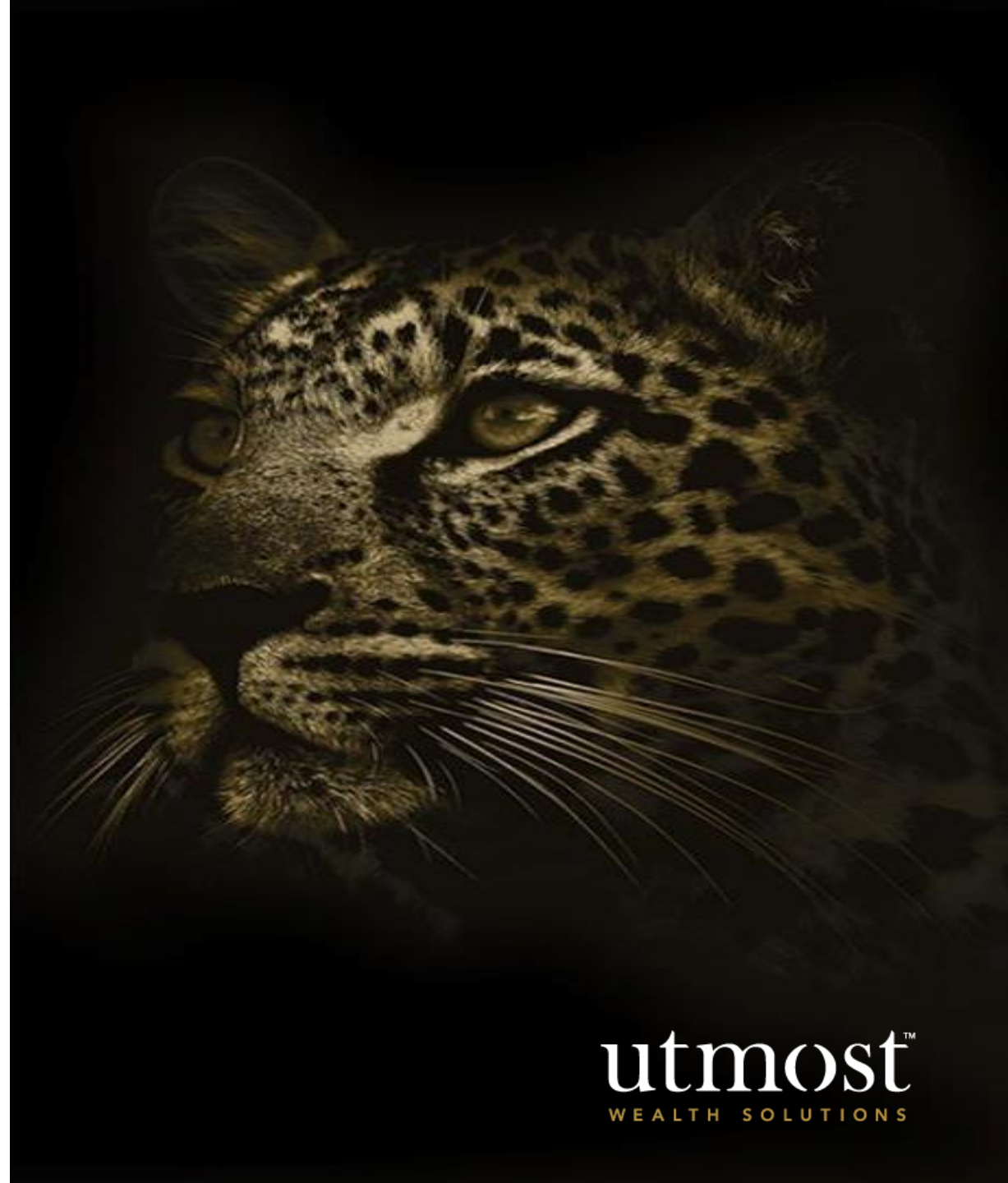
**THE EXISTENCE OF THE RIGHT TO
WITHDRAW CONSENT AT ANY
TIME, WITHOUT AFFECTING THE
LAWFULNESS OF PROCESSING
BASED ON CONSENT BEFORE ITS
WITHDRAWAL;**



INSECURITY ASSOCIATED WITH THE USE OF CONSENT FOR COMPANY

IS IT SURE FOR A
COMPANY TO USE
THE CONSENT AS
LEGAL BASIS?

A WEALTH *of* DIFFERENCE



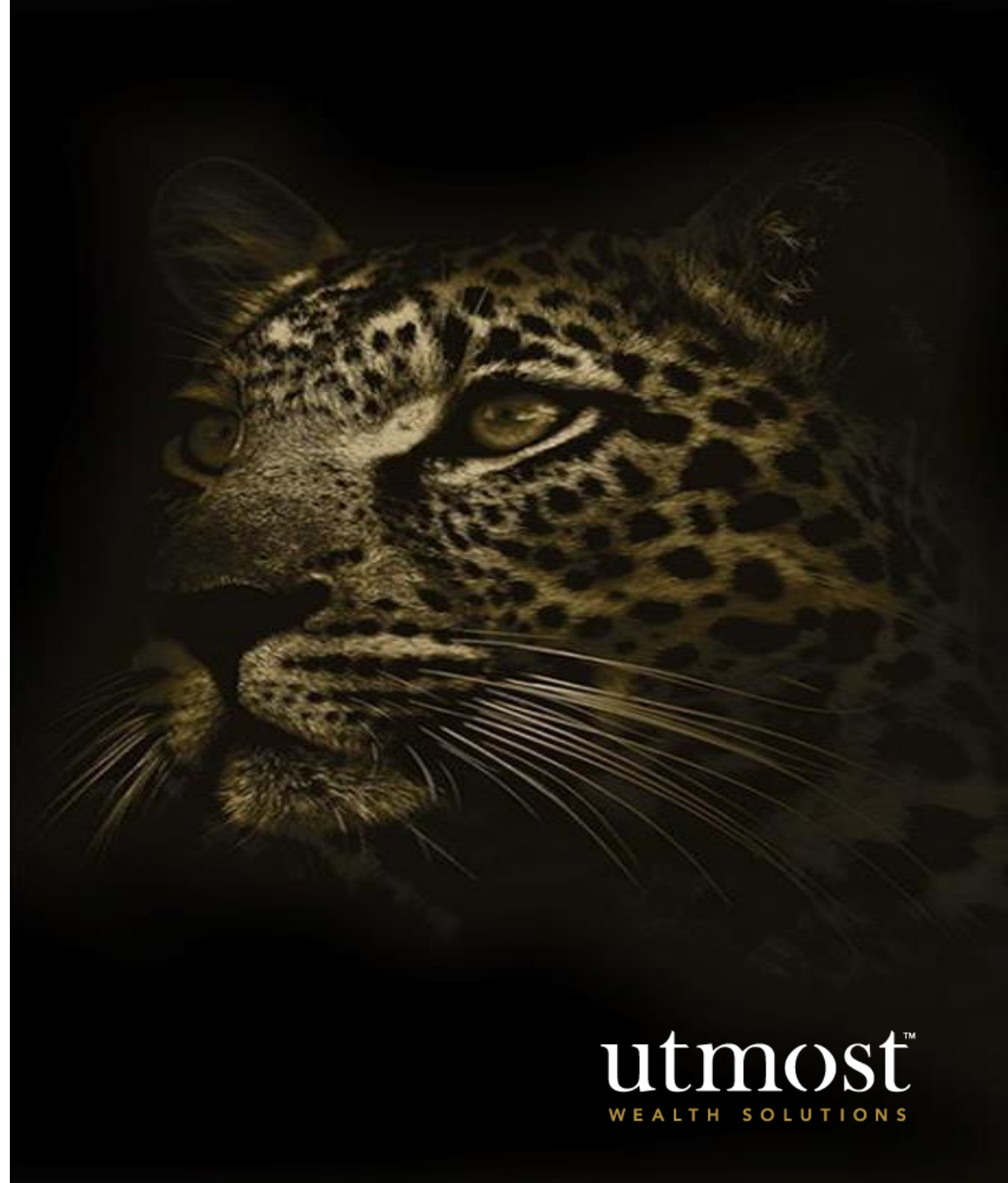
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EMPOWERMENT
ASSOCIATED WITH THE
USE OF CONSENT FOR
DATA SUBJECT

DOES CONSENT
GIVE
EMPOWERMENT
BACK TO THE
DATA SUBJECT?

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FINES LINK TO THE MISUSED OF CONSENT

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Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

the basic principles for processing, **including conditions for consent**, pursuant to Articles 5, 6, 7 and 9;

THANK YOU!