



# **PROCEDURE OF THE RIGHTS OF THE DATA SUBJECT UNDER ARTICLES 15 TO 23 OF REGULATION 679/2016**



## **PROCEDURE OF THE RIGHTS OF THE DATA SUBJECT UNDER ARTICLES 15 TO 23 OF REGULATION 679/2016**

The EU Regulation 679/2016 on the Protection of personal data provides, among its cornerstones, for the protection of the rights of the data subject in the processing of personal data.

These rights give the data subject control over the types of data used, the methods of processing, giving him or her the ability to restrict such use, to object as well as to delete personal data in certain circumstances.

Corollary to these rights is the right to complain and have judicial protection in the event of violations in the area of not allowed or unlawful processing.

First of all, this procedure aims to identify these rights, as well as to establish the timelines for feedback and the procedures to exercise them. Finally, this document identifies the subject responsible for responding to petitioners.

The purpose of this procedure is to facilitate the data subject under Article 12, paragraph 2 in exercising his or her rights.

### **The rights of the data subject**

#### Article 15 Right of access by the data subject

1. The data subject shall have the right to obtain from the data controller confirmation as to whether or not his or her personal data are being processed and, if so, to obtain access to the personal data and the following information:

- a) the purposes of the processing;
- b) the categories of personal data concerned;
- c) the recipients or categories of recipients to whom the personal data have been or will be disclosed, particularly if recipients in third countries or international organisations;
- d) where possible, the expected period of retention of personal data or, if this is not possible, the criteria used to determine that period;
- e) the existence of the right of the subject to ask the data controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
- f) the right to lodge a complaint with a supervisory authority;
- g) where the personal data are not collected from the data subject, any available information as to their source;
- h) the existence of an automated decision-making process, including profiling, as referred to in article 22, paragraphs 1 and 4 and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

2. Where personal data are transferred to a third country or to an international organisation, the data

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subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.

3. The data controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the data controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

### **Rectification and erasure**

#### **Article 16**

##### **Right to rectification**

The data subject shall have the right to obtain from the data controller the rectification of inaccurate personal data concerning him or her without undue delay. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

#### **Article 17**

##### **Right to erasure («right to be forgotten»)**

1. The data subject shall have the right to obtain from the data controller the erasure of personal data concerning him or her without undue delay and the data controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

- a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- b) the data subject withdraws consent on which the processing is based according to Article 6, paragraph 1, point (a), or to Article 9, paragraph 2, point (a), and where there is no other legal ground for the processing;
- c) the data subject objects to the processing pursuant to Article 21, paragraph 1, and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21, paragraph 2;
- d) the personal data have been unlawfully processed;
- e) the personal data have to be erased for compliance with a legal obligation under the law of the Union or of the Member State to which the data controller is subject;
- f) the personal data have been collected in relation to the offer of information society services

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referred to in Article 8, paragraph 1.

2. Where the data controller has made the personal data public and is obliged, pursuant to paragraph 1, to erase the personal data, the data controller, taking into account the available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform data controllers that are processing the personal data that the data subject has requested the erasure by such controllers of any link, copy or replication of those personal data.

3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:

- a) for exercising the right of freedom of expression and information;
- b) for compliance with a legal obligation which requires processing under the law of the Union or of the Member State to which the data controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller;
- c) for reasons of public interest in the area of public health in accordance with Article 9, paragraph 2, points (h) and (i) as well as with Article 9, paragraph 3;
- d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89, paragraph 1, in so far as the right referred to in paragraph 1 is likely to make impossible or to seriously impair the achievement of the objectives of that processing; or e) for the establishment, exercise or defence of legal claims.

### Article 18

#### Right to restriction of processing

1. The data subject shall have the right to obtain from the data controller restriction of processing where one of the following applies:

- a) the accuracy of the personal data is contested by the data subject, for a period enabling the data controller to verify the accuracy of the personal data;
- b) the processing is unlawful and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
- c) the data controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims; d) the data subject has objected to processing pursuant to Article 21, paragraph 1, pending the verification whether the legitimate grounds of the data controller override those of the data subject.

2. Where processing has been restricted under paragraph 1, such personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of

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important public interest of the Union or of a Member State.

3. A data subject who has obtained restriction of processing pursuant to paragraph 1 shall be informed by the data controller before the restriction of processing is lifted.

### **Article 19**

#### **Notification obligation regarding rectification or erasure of personal data or restriction of processing**

The data controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17, paragraph 1, and Article 18 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The data controller shall inform the data subject about those recipients if the data subject requests it.

### **Article 20**

#### **Right to data portability**

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a data controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another data controller without hindrance from the data controller to which the personal data have been provided, where:

- a) the processing is based on consent pursuant to Article 6, paragraph 1, point (a) or Article 9, paragraph 2, point (a), or on a contract pursuant to Article 6, paragraph 1, point (b); and
- b) the processing is carried out by automated means.

2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one data controller to another, where technically feasible.

3. The exercise of the right referred to in paragraph 1 of this Article shall be without prejudice to Article 17. That right shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller.

4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others. Right to object and automated individual decision-making.

### **Article 21**

#### **Right to object**

1. The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to the processing of personal data concerning him or her pursuant to Article 6, paragraph

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- 1, point (e) or (f), including profiling based on those provisions. The data controller shall no longer process the personal data unless the data controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.
2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to the processing of personal data concerning him or her for such purposes, which includes profiling to the extent that it is related to such direct marketing.
3. Where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.
4. The right referred to in paragraphs 1 and 2 shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information, at the latest at the time of the first communication with the data subject.
5. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the data subject may exercise his or her right to object by automated means using technical specifications.
6. Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to Article 89, paragraph 1, the data subject, on grounds relating to his or her particular situation, shall have the right to object to the processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.

### **Article 22**

#### **Automated individual decision-making, including profiling**

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.
2. Paragraph 1 shall not apply if the decision:
  - a) is necessary for entering into, or performing a contract between the data subject and a data controller;
  - b) is authorised by the law of the Union or of the Member State to which the data controller is subject and which also lays down suitable measures to safeguard the data subject's rights, freedoms and legitimate interests; or
  - c) is based on the data subject's explicit consent.

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3. In the cases referred to in paragraph 2, points (a) and (c), the data controller shall implement suitable measures to safeguard the data subject's rights, freedoms and legitimate interests, at least the right to obtain human intervention on the part of the data controller, to express his or her point of view and to contest the decision. 4. The decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9, paragraph 1, unless Article 9, paragraph 2, points (a) or (g) applies and suitable measures to safeguard the data subject's rights, freedoms and legitimate interests are in place.

**Article 23****Restrictions (C73)**

1. The law of the Union or of the Member State to which the data controller or processor is subject may restrict, by legislative measures, the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:

- a) national security;
- b) defence;
- c) public security;
- d) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
- e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation, public health and social security matters;
- f) the protection of judicial independence and judicial proceedings;
- g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- h) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (e) and (g);
- i) the protection of the data subject or the rights and freedoms of others;
- j) the enforcement of civil law claims.

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least, where relevant, as to:

- a) the purposes of the processing or categories of processing;

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- b) the categories of personal data;
- c) the scope of the restrictions introduced;
- d) the safeguards to prevent abuse or unlawful access or transfer;
- e) the specification of the data controller or categories of data controllers;
- f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
- g) the risks to the rights and freedoms of data subjects; and
- h) the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.

### **Judicial protection**

Regulation 679/2016 provides in its Chapter VIII for remedies to protect the data subject. In particular, Articles 77 (Right to lodge a complaint with a Supervisory Authority), Article 78 (Right to an effective judicial remedy against a Supervisory Authority) and Article 79 (Right to an effective judicial remedy against the data controller or processor).