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PROCEDURE FOR THE EXERCISE OF THE RIGHTS OF THE DATA SUBJECT PURSUANT TO ARTICLES 15 TO 23 OF REGULATION 679/2016

Among the most salient points of EU Regulation 679/2016 on the Protection of personal data are the provisions regarding the protection of the rights of the data subject regarding the processing of personal data.

Said rights allow the data subject control over the type of data used, the methods of processing and grants him/her the possibility to restrict said use, to object and to delete personal data under certain conditions.

The corollary of these rights is the right to lodge a complaint and to judicial protection in case of violations by unauthorised or unlawful processing.

This procedure intends, first of all, to identify said rights and to establish the deadlines for response and the ways in which these rights may be exercised. Lastly, this document identifies the person who is responsible for replying to the data subjects.

The purpose of this procedure is to make it easier for the data subject to exercise his/her rights pursuant to article 12(2).

THE RIGHTS OF THE DATA SUBJECT

Article 15

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Right of access by the data subject

1. The data subject shall have the right to obtain from the Data Controller the confirmation that the personal data that concern him/her are being processed or not; in the former case, he/she may obtain access to the personal data and to the following information:

a) the purposes of processing;

b) the categories of the personal data in question;

c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;

d) to the extent that this is possible, the period of time during which it has been foreseen that the personal data will be retained or, if that is not possible, the criteria used to determine such period of time;

e) the existence of the right of the data subject to request from the Data Controller the rectification or erasure of the personal data or the restriction of the processing of the personal data that concern him/her or to object to their processing;

f) the right to lodge a complaint with a supervisory authority;

g) if the data has not yet been collected from the data subject, all the information available on their origin;

h) the existence of automated decision-making, including profiling, referred to in article 22(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. In cases where the personal data are transferred to a third country or to an international organisation, the data subject has the right to be informed of the existence of the appropriate guarantees of article 46 related to the transfer.

3. The Data Controller shall provide a copy of the personal data that is being processed.

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

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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 without undue delay the rectification of inaccurate personal data concerning him or her. 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:

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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 point (a) of article 6(1), or point (a) of article 9(2), and where there is no other legal ground for the processing;

c) the data subject objects to the processing pursuant to article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to article 21(2);

d) the personal data have been unlawfully processed;

e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the Data Controller is subject;

f) the personal data have been collected in relation to the offer of information society services referred to in article 8(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 account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform Data Controllers which are processing the personal data that the data subject has requested the erasure of any links to, or copy or replication of his/her 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 by Union or Member State law 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 points (h) and (i) of article 9(2) as well as article 9(3);

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d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or 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 disputed 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(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 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.

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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(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 has been provided, where:

a) the processing is based on consent pursuant to point (a) of article 6(1) or point (a) of article 9(2) or on a contract pursuant to point (b) of article 6(1); 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.

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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 for natural persons

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 processing of personal data concerning him or her pursuant to point (e) or (f) of article 6(1), 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 is processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.

3. Where the data subject objects to the processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.

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4. At the latest at the time of the first communication with the data subject, 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.

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(1), the data subject, on grounds relating to his or her particular situation, shall have the right to object to 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

Right to object and automated individual decision-making for natural persons, including pro filing

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 performance of, a contract between the data subject and a Data Controller;

b) is authorised by Union or Member State law to which the Data Controller is subject and which also lays down suitable measures to safeguard the data subject's rights and 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 points (a) and (c) of paragraph 2, the Data Controller shall implement suitable measures to safeguard the data subject's rights and 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. Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in article 9(1), unless point (a) or (g) of article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

Restrictions

Article 23

Restrictions (C73)

1. Union or Member State law to which the Data Controller or Processor is subject may restrict by way of a legislative measure 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;

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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 matters, public health and social security;

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;

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 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

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Chapter VIII of EU Regulation 679/2016 stipulates the remedies available to 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 70 (Right to an effective judicial remedy against a Data Controller or Data Processor).

MODALITIES OF EXERCISING THE RIGHTS AND OF RESPONSE

The rights of the data subject may be exercised via e-mail, certified e-mail, registered letter with proof of receipt.

To facilitate the exercise of such rights, the data subject may download the form at the link www.antoniolupi.it.

For the exercise of these rights, the data subject may write to the e-mail address: privacy@antoniolupi.it.

The Data Controller, directly or through an official, shall provide information on action taken on a request under articles 15 to 22 to the data subject without undue delay and in any event within 30 days of receipt of the request.

That period may be extended by a further 60 days where necessary, taking into account the complexity and number of the requests. The Data Controller shall inform the data subject of any such extension within 30 days of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.

If the Data Controller does not take action on the Data Controller shall inform the data subject without delay and at the latest within 30 days of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.

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Information provided to the data subject and any communication and any actions taken shall be provided free of charge.

Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the Data Controller may either:

a) charge a reasonable fee taking into account the administrative costs of providing the information (€ 100,00) or communication or taking the action requested; or

b) refuse to act on the request.

The Data Controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

Where the Data Controller has reasonable doubts concerning the identity of the natural person making the request referred to in articles 15 to 21, the Data Controller may request the provision of additional information necessary to confirm the identity of the data subject.