



EN

Article 9.

Processing of special categories of personal data

Article 9.

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

Recitals

(51) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. Such personal data should not be processed, unless processing is allowed in specific cases set out in this Regulation, taking into account that Member States law may lay down specific provisions on data protection in order to adapt the application of the rules of this Regulation for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. In addition to the specific requirements for such processing, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia, where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

Guidelines & Case Law

Documents

Article 29 Working Party, [Opinion 2/2012 on Facial Recognition in Online and Mobile Services](#) (2012).

Article 29 Working Party, [Opinion 3/2012 on Developments in Biometric Technologies](#) (2012).

EDPB, [Guidelines on the use of location data and contact tracing tools in the context of the COVID-19 outbreak](#) (2020).

EDPB, [Guidelines 8/2020 on the targeting of social media users](#) (2020):

If a social media provider or a targeter uses observed data to categorise users as having certain religious, philosophical or political beliefs-regardless of whether the categorization is correct/true or not-this categorisation of the user must obviously be seen as processing of special category of personal data in this context. As long as the categorisation enables targeting based on special category data, it does not matter how the category is labelled.

EDPB, [Guidelines 06/2020 on the interplay of the Second Payment Services Directive and the GDPR](#) (2020).

Financial transactions can reveal sensitive information about individual data subject, including those related to special categories of personal data. For example, political opinions and religious beliefs may be revealed by donations made to political parties or organisations, churches or parishes. Trade union membership may be revealed by the deduction of an annual membership fee from a person's bank account. Personal data concerning health may be gathered from analysing medical bills paid by a data subject. Finally, information on certain purchases may reveal information concerning a person's sex life or sexual orientation.

Moreover, through the sum of financial transactions, different kinds of behavioural patterns could be revealed, including special categories of personal data and additional services that are facilitated by account information services might rely on profiling as defined by article 4 (4) of the GDPR. Therefore, the chances are considerable that *a service provider processing information on financial transactions of data subjects also processes special categories of personal data.*

2. Paragraph 1 shall not apply if one of the following applies:

Recitals

(52) Derogating from the prohibition on processing special categories of personal data should also be allowed when provided for in Union or Member State law and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where it is in the public interest to do so, in particular processing personal data in the field of employment law, social protection law including pensions and for health security, monitoring and alert purposes, the prevention or control of communicable diseases and other serious threats to health. Such a derogation may be made for health purposes, including public health and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. A derogation should also allow the processing of such personal data where necessary for the establishment, exercise or defence of legal claims, whether in court proceedings or in an administrative or out-of-court procedure.

(53) Special categories of personal data which merit higher protection should be processed for health-related purposes only where necessary to achieve those purposes for the benefit of natural persons and society as a whole, in particular in the context of the management of health or social care services and systems, including processing by the management and central national health authorities of such data for the purpose of quality control, management information and the general national and local supervision of the health or social care system, and ensuring continuity of health or social care and cross-border healthcare or health security, monitoring and alert purposes, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, based on Union or Member State law which has to meet an objective of public interest, as well as for studies conducted in the public interest in the area of public health. Therefore, this Regulation should provide for harmonised conditions for the processing of special categories of personal data concerning health, in respect of specific needs, in particular where the processing of such data is carried out for certain health-related purposes by persons subject to a legal obligation of professional secrecy. Union or Member State law should provide for specific and suitable measures so as to protect the fundamental rights and the personal data of natural persons. Member States should be allowed to maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health. However, this should not hamper the free flow of personal data within the Union when those conditions apply to cross-border processing of such data.

(54) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. Such processing should be subject to suitable and specific measures so as to protect the rights and freedoms of natural persons. In that context, 'public health' should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council [11], namely all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers or insurance and banking companies.

[11] Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work (OJ L 354, 31.12.2008, p. 70). <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=OJ:L:2008:354:TOC>

(55) Moreover, the processing of personal data by official authorities for the purpose of achieving the aims, laid down by constitutional law or by international public law, of officially recognised religious associations, is carried out on grounds of public interest.

(56) Where in the course of electoral activities, the operation of the democratic system in a Member State requires that political parties compile personal data on people's political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.

- (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
- (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
- (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
- (d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;
- (e) processing relates to personal data which are manifestly made public by the data subject;

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EDPB, [Guidelines 8/2020 on the targeting of social media users](#) (2020):

The word “manifestly” implies that there must be a high threshold for relying on this exemption. The EDPB notes that the presence of a single element may not always be sufficient to establish that the data have been “manifestly” made public by the data subject. In practice, a combination of the following or other elements may need to be considered for controllers to demonstrate that the data subject has clearly manifested the intention to make the data public, and a case-by-case assessment is needed. The following elements may be relevant to help inform this assessment:

- the default settings of the social media platform (i.e. whether the data subject took a specific action to change these default private settings into public ones); or
- the nature of the social media platform (i.e. whether this platform is intrinsically linked with the idea of connecting with close acquaintances of the data subject or creating intimate relations (such as online dating platforms), or if it is meant to provide a wider scope of interpersonal relations, such as professional relations, or microblogging, etc... ; or
- the accessibility of the page where the sensitive data is published (i.e. whether the information is publically accessible or if, for instance, the creation of an account is necessary before accessing the information); or
- the visibility of the information where the data subject is informed of the public nature of the information that they publish (i.e. whether there is for example a continuous banner on the page, or whether the button for publishing informs the data subject that the information will be made public...); or
- if the data subject has published the sensitive data himself/herself, or whether instead the data has been published by a third party (e.g. a photo published by a friend which reveals sensitive data) or inferred.

The EDPB notes that the presence of a single element may not always be sufficient to establish that the data have been “manifestly” made public by the data subject. In practice, a combination of these or other elements may need to be considered for controllers to demonstrate that the data subject has clearly manifested the intention to make the data public.

(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;

(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;

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EDPB, [Guidelines on the use of location data and contact tracing tools in the context of the COVID-19 outbreak](#) (2020).

(i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;

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Legislation

Regulation (EC) No 1338/2008 on Community Statistics on Public Health and Health and Safety at Work, OJEU L 354, 31 December 2008, p. 70.

Documents

EDPB, [Guidelines on the use of location data and contact tracing tools in the context of the COVID-19 outbreak](#) (2020).

(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

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Document

EDPB, *Opinion 3/2019 Concerning the Questions and Answers on the Interplay Between the Clinical Trials Regulation (CTR) and the General Data Protection Regulation (GDPR) (art. 70.1.b)* (2019).

EDPB, [Guidelines on the use of location data and contact tracing tools in the context of the COVID-19 outbreak](#) (2020).

Legislation

Regulation (EU) No 536/2014 on Clinical Trials on Medicinal Products for Human Use, OJEU L 158, 27 May 2014, p. 1.

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.

4. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.

General Data Protection Regulation (EU GDPR)

The latest consolidated version of the Regulation with corrections by Corrigendum, OJ L 127, 23.5.2018, p. 2 ((EU) 2016/679). Source: EUR-lex.

Related information Article 9. Processing of special categories of personal data

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Documents

Article 29 Working Party, [Opinion 2/2010 on behavioural advertising](#) (2010):

Any possible targeting of data subjects based on sensitive information opens the possibility of abuse. Furthermore, given the sensitivity of such information and the possible awkward situations which may arise if individuals receive advertising that reveals, for example, sexual preferences or political activity, offering/using interest categories that would reveal sensitive data **should be discouraged**.

In this context, the only available legal ground that would legitimize the data processing would be explicit, separate prior opt-in **consent**. The requirement for a separate, affirmative prior indication of the data subjects' agreement means that in no case would an opt-out consent mechanism meet the requirement of the law. It also means that such consent **could not be obtained through browser settings**. To lawfully collect and process this type of information, ad network providers would have to set up mechanisms to obtain explicit prior consent, **separate from other consent obtained for processing in general**.

EDPB, [Assessing the Necessity of Measures That Limit the Fundamental Right to the Protection of Personal Data: A Toolkit](#) (2017).

WP29, [Opinion on data processing at work](#) (2017).

European Commission, [Commission Guidance on the application of Union data protection law in the electoral context](#), *A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018*.

EDPB, [Guidelines on Assessing the Proportionality of Measures That Limit the Fundamental Rights to Privacy and to the Protection of Personal Data](#) (2019).

EDPB, [Guidelines on the use of location data and contact tracing tools in the context of the COVID-19 outbreak](#) (2020).

EDPB, [Guidelines 8/2020 on the targeting of social media users](#) (2020).

EDPB, [Guidelines 3/2020 on the Processing of Data Concerning Health for the Purpose of Scientific Research in the Context of the Covid-19 Outbreak](#) (2020).

EDPB, [Guidelines 3/2019 on Processing of Personal Data through Video Devices](#) (2020).

European Commission, [Guidance on Apps supporting the fight against COVID 19 pandemic in relation to data](#)



[protection Brussels](#) (2020).

EDPB, [Guidelines 02/2021 on Virtual Voice Assistants](#) (2021).

Case Law

Grainger Plc v. Nicholson, [2010] ICR 360.

CJEC, *Lindqvist*, C-101/01 (2003).

Eur. Court HR (Grand Chamber), *López Ribalda v. Spain*, nos. 1874/13 and 8567/13 (2019).

Eur. Court HR, *Gaughran v. United Kingdom*, no. 45245/15 (2020).
