



EN

Article 7.

Conditions for consent

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1. Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.
2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.

Recitals

(42) Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware of the fact that and the extent to which consent is given. In accordance with Council Directive 93/13/EEC [10] a declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.

[10] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29). <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=OJ:L:1993:095:TOC>

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw as to give consent.
4. When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

Recitals

(43) In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data

in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation. Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the consent despite such consent not being necessary for such performance.

(32) Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

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 7. Conditions for consent

Recitals

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(33) It is often not possible to fully identify the purpose of personal data processing for scientific research purposes at the time of data collection. Therefore, data subjects should be allowed to give their consent to certain areas of scientific research when in keeping with recognised ethical standards for scientific research. 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.

(42) Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware of the fact that and the extent to which consent is given. In accordance with Council Directive 93/13/EEC [10] a declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.

[10] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29). <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=OJ:L:1993:095:TOC>

(43) In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing

of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation. Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the consent despite such consent not being necessary for such performance.

Guidelines & Case Law

Documents

Article 29 Working Party, [Opinion 4/2012 on Cookie Consent Exemption](#) (2012).

Article 29 Working Party, [Working Document 2/2013 Providing Guidance on Obtaining Consent for Cookies](#) (2013).

EDPB, [Guidelines 5/2020 on Consent under Regulation 2016/679](#) (2020).

CNIL, [Guidelines on Cookies and Tracking Devices](#) (in French) (2019).

European Commission, [Guidance on Apps supporting the fight against COVID 19 pandemic in relation to data protection](#) Brussels (2020).

Case Law

CJEU, [Judgment in Planet 49 GmbH, Case C-673/17](#) (2019).

[Belgian DPA Fines Belgian Telecommunications Provider for Several Data Protection Infringements](#), (2020). Brief description in [English](#).

CJEU, [Data Protection Commissioner/Facebook Ireland Ltd and Schrems](#), C-311/18 (2020).

CNIL, [Cookies : sanction de 35 millions d'euros à l'encontre d'AMAZON EUROPE CORE and sanction de 60 millions d'euros à l'encontre de GOOGLE LLC et de 40 millions d'euros à l'encontre de GOOGLE IRELAND LIMITED](#) (2020).
