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# Article 20.

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Right to data portability



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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 controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:

### Expert commentary

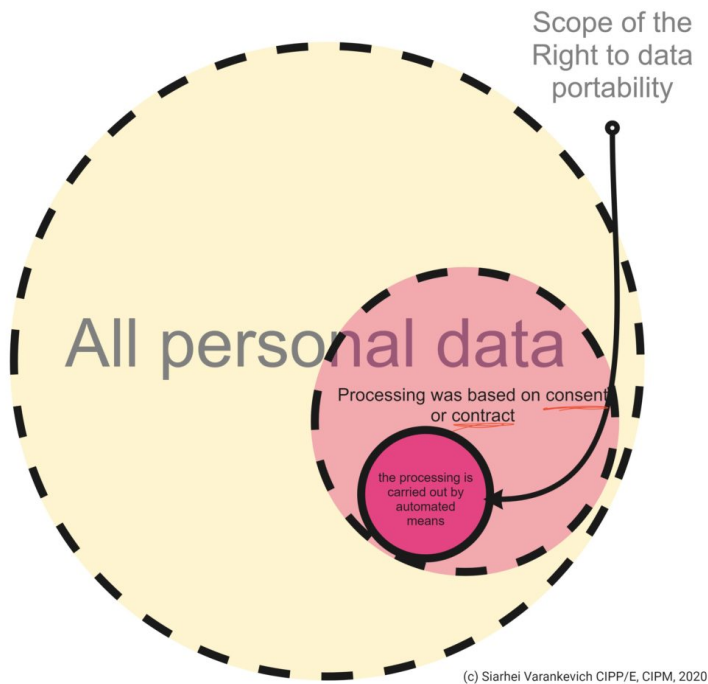
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(a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9(2) or on a contract pursuant to point (b) of Article 6(1); and

(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 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 controller.

4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.

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 20. Right to data portability

### Expert commentary

The right to data portability is presented primarily as a way to support “*user choice, user control, and user empowerment*” (*Guidelines on the Right to Data Portability*), as it aims at reinforcing an individual’s control over her/his personal information (recital 68). Data portability allows users to receive a copy of their personal data and can be seen in that sense as an extension of the right of access (article 15). It can also help them to switch services without losing their data, enabling users to transfer their information from one service to a potentially better one.

Article 20 provides for a general right to data portability, which may be decomposed into two separate rights: i) a right to receive one’s personal data “*in a structured, commonly used and machine-readable format*”; and ii) a right to transmit the received data without interference. Portability can be invoked if the following conditions are respected:

- data has been collected based on **consent** [article 6 (1) (a) or 9 (2) (a)] or on a **contract** [article 6 (1) (b)]; and
- they were processed by **automated means**, which excludes most paper files (*Guidelines on the Right to Data Portability*).

What are the data concerned by the portability right? Article 20 says it is the data “*provided*” by a person. The *Guidelines on the Right to Data Portability* specifies that this word must be interpreted broadly. It recommends that data derived from the activities of users (logs, browsing history, search activities, location, and so on) should be treated as data “*provided*” by a user. Therefore, the right covers not only the data actively and directly volunteered by users, but also those generated by their activity while using the application, device or service in question. The official interpretation extends the reach of the right to data portability beyond the text of the article itself and the legislative intent of the Council and the Parliament, some critics say.

### Author



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Data concerned by the provision are only “*personal data*”, within the meaning of article 4 (1), which excludes anonymous data and data that are not related to a user (*Guidelines on the Right to Data Portability*). It should also be emphasized that the right to data portability must be regarded in the context of the *General Data Protection Regulation*. It concerns “*personal data*” and not data in general. A playlist from a streaming service, for example, contains the listening preferences of a user and is thus included in the scope of the right but the songs themselves are not.

The right to data portability cannot, as a rule, affect other people’s rights (recital 68). The guarantee aims at avoiding the processing of third parties’ personal data without a legal basis while allowing a person to exercise her/his right to data portability. However, there are limits to this exception. If, for example, a person requests his/her calling data, the data might include third parties’ information related to incoming and outgoing calls (like phone numbers). These data should be considered for the portability right as they also concern the person who requests the data (*Guidelines on the Right to Data Portability*). One can argue that the transfer does not affect third parties’ rights more than the initial processing, explaining the existence of this limit to safeguarding the rights and freedoms of others.

Article 20 prescribes that data should be communicated “*in a structured, commonly used and machine-readable format*”, but falls short of defining precisely the outline of these requirements. A machine-readable format is defined in a European directive as a format “*that is structured in such a way that software applications can easily identify, recognise and extract specific data from it*” (*Directive 2013/37/EU*).

“*Structured*” could refer to an obligation to organize the information in such a way that it can be easily accessible to users. They should not have to dig into the document or file provided to find the expected data. Information should be classified or categorized systematically in a comprehensible manner and they should be offered “*in a format which supports re-use*” (*Guidelines on the Right to Data Portability*).

The expression “*commonly used*”, read in conjunction with recital 68, seems to refer to the concept of “*interoperability*”. Indeed, recital 68 completes the text of the article adding a requirement that data should be made available in an “*interoperable*” format. It states that “*controllers should be encouraged to develop interoperable formats that enable data portability*”, but it does not go as far as requesting that controllers adopt or maintain technically compatible

processing systems.

Even if it was adopted as one of the eight rights guaranteed by the GDPR, the right to data portability may be looked at first and foremost as a regulatory tool to stimulate competition and innovation in the European internal market. It may be potentially thought of as an economic incentive to promote the free flow of information and competitiveness between service providers.

The right to transmit received data to another controller depends almost solely on innovation. Could the requirement of being able to transfer data “*without hindrance*” be read as an obligation to develop such systems? The *Guidelines on the Right to Data Portability* specify that “*hindrance*” comprehends “*legal, technical or financial obstacles*” if they refrain or slow down access, transmission or reuse of data. The *Guidelines* go as far as classifying the lack of interoperability as an example of such hindrance. It should be mentioned though that article 20 poses one condition to the exercise of the right to transfer data: it must be technically feasible.

Data portability poses a challenge to information technology companies as they are generally not ready technically to answer such a demand. The technology giant companies partnered to develop new standards to make it technically possible to transfer data from one service to another ([Data Transfer Project](#)), but it is still in the process of being elaborated. The European Union granted a right which can push innovation, but cannot be fully respected in the present state of the art. Technical developments are still in their infancy and it seems almost premature to label data portability as a “*right*”.

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### Expert commentary

#### Data Subject Request Letter Sample

Author

Concern: Exercise my right to data portability

Dear Madam, Dear Sir,

I would like to exercise my right to data portability under Article 20 of the *General Data Protection Regulation* (GDPR).



I would like to obtain a copy of all my personal data [*in a structured, commonly used and machine-readable format*] [*transferred to XXX*].

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Personal data requested include information I have provided to your [*company | organization | etc.*] and information that your [*company | organization | etc.*] has gathered by monitoring my activity while using your [*app | device | service | website | etc.*].

Thank you for providing me with an answer as soon as possible, and in any event within one month of the receipt of my request, according to Article 12(3) of the GDPR.

In the absence of any action taken upon my request in a timely manner or in the event of an incomplete answer, I reserve my right to lodge a complaint with the relevant supervisory authority and seek judicial remedy.

Sincerely,

Data Subject

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### Recitals

(68) To further strengthen the control over his or her own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to receive personal data concerning him or her which he or she has provided to a controller in a structured, commonly used, machine-readable and interoperable format, and to transmit it to another controller. Data controllers should be encouraged to develop interoperable formats that enable data portability. That right should apply where the data subject provided the personal data on the basis of his or her consent or the processing is necessary for the performance of a contract. It should not apply where processing is based on a legal ground other than consent or contract. By its very nature, that right should not be exercised against controllers processing personal data in the exercise of their public duties. It should therefore not apply where the processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller. The data subject's right to transmit or receive personal data concerning him or her should not create an obligation for the controllers to adopt or maintain processing systems which are technically compatible. Where, in a certain set of personal data, more than one data subject is concerned, the right to receive the personal data should be without prejudice to the rights and freedoms of other data subjects in accordance with this Regulation. Furthermore, that right should not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should, in particular, not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract to the extent that and for





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as long as the personal data are necessary for the performance of that contract. Where technically feasible, the data subject should have the right to have the personal data transmitted directly from one controller to another.

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## Guidelines & Case Law

### Documents

Article 29 Working Party, [Guidelines on the Right to Data Portability](#) (2017).

Information Commissioner's Office, [Right of Access](#) (2020).

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

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