



EN

Article 8.

Conditions applicable to child's consent in relation to information society services

Article 8.

1. Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Guidelines & Case Law

Documents

Article 29 Working Party, *Guidelines on Consent under Regulation 2016/679* (2018).

The inclusion of the wording ‘**offered directly to a child**’ indicates that Article 8 is intended to apply to some, not all information society services. In this respect, if an information society service provider makes it clear to potential users that it is only offering its service to persons aged 18 or over, and this is not undermined by other evidence (such as the content of the site or marketing plans) then the service will not be considered to be ‘offered directly to a child’ and Article 8 will not apply.

Article 29 Working Party, *Guidelines on transparency under Regulation 2016/679* (2018).

Where a data controller is targeting children[16] or is, or should be, aware that their goods/services are particularly utilised by children (including where the controller is relying on the consent of the child)[17], it should ensure that the vocabulary, tone and style of the language used is appropriate to and resonates with children so that the child addressee of the information recognises that the message/ information is being directed at them.[18] A useful example of child-centred language used as an alternative to the original legal language can be found in the “UN Convention on the Rights of the Child in Child Friendly Language”.[19]

Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

Guidelines & Case Law

Article 29 Working Party, *Guidelines on Consent under Regulation 2016/679, WP259 rev.01* (2018):

What is reasonable, both in terms of verifying that a user is old enough to provide their own consent, and in terms of verifying that a person providing consent on behalf of a child is a holder of parental responsibility, may depend upon the risks inherent in the processing as well as the available technology. In low-risk cases, verification of parental responsibility via email may be sufficient. Conversely, in high-risk cases, it may be appropriate to ask for more proof, so that the controller is able to verify and retain the information pursuant to Article 7(1) GDPR. Trusted third party verification services may offer solutions which minimise the amount of personal data the controller has to process itself.

3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

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 8. Conditions applicable to child's consent in relation to information society services

Recitals

(38) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

Guidelines & Case Law

Documents

Article 29 Working Party, *Opinion 2/2009 on the Protection of Children's Personal Data (General Guidelines and the Special Case of Schools)* (2009).

EDPB, *Guidelines 5/2020 on Consent under Regulation 2016/679* (2020).

ICO, *Age Appropriate Design: A Code of Practice for Online Services* (2020).

Case Law

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