

CONSENT

One of the lawful grounds for the processing of personal data under Article 6 of the General Data Protection Regulation (the “GDPR”)

For consent to be valid, it must meet the following conditions:

FREELY GIVEN

Data subjects should have a real choice and control over the processing of their personal data. The GDPR prescribes that if a data subject has no real choice, feels compelled to consent or will endure negative consequences if they do not consent, then consent will not be valid.

SPECIFIC

Consent must be given in relation to one or more specific purposes. This means that data subjects have a choice in relation to each purpose. This requirement ensures a level of user control and transparency for the data subject.

INFORMED

For consent to be informed, data controllers should provide individuals with the necessary information to allow them to make an informed choice. The GDPR puts several requirements for informed consent, mainly in Article 7(2) and Recital 32 of the GDPR.

UNAMBIGUOUS

Article 4(11) of the GDPR makes it clear that consent requires an unambiguous indication by means of a statement or by a clear affirmative action from the data subject. In general terms, it must be obvious that the individual has consented to the particular processing of their data.

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EXPLICIT CONSENT

Plays a role in the processing of special categories of personal data, the provisions on data transfers to third countries or international organisations in the absence of adequate safeguards and on automated individual decision-making.

The term **'explicit'** refers to the way consent is expressed by the data subject. It means that the data subject must give an express statement of consent. For example -

WRITTEN STATEMENT

Data subject may expressly confirm consent in a written statement which should be signed by the data subject to remove all possible doubt and potential lack of evidence in the future.

DIGITAL/ONLINE CONTEXT

Data subject may provide the required statement by filling in an electronic form, by sending an email, by uploading a scanned document carrying his/her signature or by using an electronic signature.

ORAL STATEMENTS

The use of oral statements may make it difficult for data controllers to prove that all conditions for valid explicit consent were met when the statement was recorded.

TELEPHONE

Data controllers should ensure information about the choice is fair, intelligible and clear, and that it asks for a specific confirmation from the data subject (e.g. pressing a button or providing oral confirmation).

Two stage verification of consent may also be a way to make sure explicit consent is valid.

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DEMONSTRATING CONSENT

Article 7(1) of the General Data Protection Regulation (the “GDPR”) prescribes that data controllers must be able to demonstrate a data subject’s consent. This means that the burden of proof will be on the data controller.

- 1.** Data controllers should only obtain enough data to show consent was obtained but not collect any more information than necessary.
- 2.** Data controllers must be able to demonstrate consent for as long as the data processing activity lasts. Once processing activity ends, proof of consent should be kept no longer than is strictly necessary.
- 3.** The GDPR does not impose a specific time limit in respect of how long consent will last. How long consent lasts will depend on the context, scope of the original consent and the expectations of the data subject.
- 4.** If processing operations change or evolve considerably, then the original consent will no longer be valid and new consent will need to be sought.

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WITHDRAWING CONSENT

Article 7(3) of the General Data Protection Regulation (the “GDPR”) prescribes that data controllers must ensure that consent can be withdrawn by the data subject and that **consent must be as easy to withdraw as it was to give.**

WHAT YOU NEED TO KNOW!



The GDPR does not state that giving and withdrawing consent must always be done through the same action. However, when consent is obtained via electronic means through only one mouse-click, swipe or keystroke, data subjects must, in practice, be able to withdraw consent equally as easily.

Data subjects should be able to withdraw consent without detriment. This means that data controllers must, where possible, make withdrawal of consent free of charge or without lowering service levels.

Easy withdrawal of consent is a necessary aspect of valid consent under the GDPR. Therefore, if the withdrawal right does not meet GDPR standards, then the consent mechanism used by a data controller would not comply with the GDPR.

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CONSENT AND CHILDREN'S DATA

Article 8 of the General Data Protection Regulation (the “GDPR”) introduces additional obligations to ensure an enhanced level of data protection for children **in relation to information society services**. The reasons for the enhanced protection are specified in Recital 38 of the GDPR.



The processing of the personal data of a child shall be lawful where the child is at least 13 years old.

If the child is below the age of 13 years, the processing shall be lawful only if consent is given or authorised by the holder of parental responsibility over the child.

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Consent obtained prior to the General Data Protection Regulation (the “GDPR”) continues to be valid as long as it meets the conditions for consent in the GDPR.

CONSENT OBTAINED PRIOR TO THE GDPR

1. If data controllers find that the consent obtained prior to the GDPR does not meet the GDPR standard, they will need to take appropriate action to comply with these standards (e.g. refreshing consent in a GDPR-compliant manner).
2. If a data controller is unable to renew consent to meet the GDPR standard and is also unable (as a one-off situation) to rely on a different lawful basis for the processing of personal data, the processing activities must be **STOPPED**.



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