

9. OTHER RIGHTS THAT CAN BE EXERCISED: ACCESS, RECTIFICATION, ERASURE, RESTRICT PROCESSING, DATA PORTABILITY, OBJECT AND NOT TO BE SUBJECT TO AUTOMATED DECISIONS

The GDPR recognises the following rights in relation to the processing of personal data: the right of access, the right to rectification, the right to erasure, the right to restrict processing, the right to data portability, the right to object and the right not to be subject to a decision based solely on automated processing. These rights are very personal, so they can only be exercised by the owner of the data himself, although this can also be done through a legal or voluntary representative.

The deadline for replying to the request to exercise any of the rights is one month, extendable for another two months if necessary, taking into account the complexity and number of requests. If the Data Controller considers that the right exercised is not adequate, he must also respond without delay and within a maximum period of one month, indicating to the concerned data subject the reasons why the right exercised is not effective. It should also be informed of the possibility of taking appropriate measures, in particular to claim against a Control Authority.

Each of these rights is addressed below:

Access: The purpose of this right is for anyone to know that their data is being processed by a local entity. If a person exercises this right and the Controller processes their personal data, a copy of the data being processed has to be provided, as well as other additional information, which is largely in line with the content of the right to information (purposes of processing; categories of personal data; recipients or categories of recipients; expected retention period or criteria used to determine it; etc.). The right to obtain a copy of the data cannot adversely affect the rights and freedoms of third parties.

Rectification: through this right the person can request the modification of the data that are inaccurate, or that those that are incomplete, can be completed. When this right is exercised, the request for rectification must indicate the data to which it refers, and the rectification to be made; and must be accompanied, where appropriate, by documentation justifying the inaccuracy or incompleteness of the data that is being processed.

Erasure or right to be forgotten: this is the right of the concerned data subject to have the personal data erasure in certain cases: when the data is no longer necessary for the purposes pursued; when the concerned data subject withdraws his or her consent; if the concerned data subject objects to the processing and other legitimate reasons for the processing do not prevail; if the data has been processed unlawfully; etc. The European Regulation lists the cases in which this right does not apply, considering that the processing is necessary to exercise the right to freedom of expression and information; to comply with a legal obligation

requiring data processing, such as where archival legislation requires the retention of documentation containing the data; or to carry out a task carried out in the public interest or in the exercise of official authority vested in the person responsible; etc.

Restrict processing: allows the interested party to demand that the data can only be used in certain circumstances. In other words, it is like suspending data processing, but not erasing it. This right can be requested in the following four cases: when the Concerned data subject contests the accuracy of the personal data, during the period that allows the person responsible to verify its accuracy; when the processing is unlawful but the concerned data subject objects to the deletion of the data and, instead of erasing it, requests that its use be limited; where the controller no longer needs the data for the purposes of the processing, but the concerned data subject needs them to make, exercise or defend claims; and where the concerned data subject has objected to the processing on the basis of a particular situation, while verifying whether the legitimate reasons of the Controller prevail over those of the concerned data subject.

Data Portability: can be exercised if the processing is carried out by automated means; and also, if it is based on the consent of the interested party or on the execution of a contract. Therefore, the right to data portability does not come into play when the processing is carried out by Public Administrations to fulfil a mission of public interest or in the exercise of public powers conferred to the controller, or in compliance with a legal obligation.

In cases where this right applies, the concerned data subject may request the transfer of the data to another controller, or also request that the data provided to the controller be provided in a structured format.

Object: under this right the Controller is requested to cease a certain processing of the data, and such a request is based on reasons related to the particular situation of the applicant, such as a person who may be a victim of gender violence, protected testimony, etc.

This right may be exercised where the processing, including profiling, is based on the public interest or on the exercise of public powers vested in the Controller; in the legitimate interest pursued by the Controller or by a third party; or is carried out for scientific or historical research purposes or for statistical purposes, unless it is necessary to carry out a mission carried out for reasons of public interest. In such cases, the controller shall cease processing, unless he or she can demonstrate legitimate reasons that prevail over the interests, rights and freedoms of the data subject; or that the treatment is necessary for the formulation, exercise or defence of claims.

Not to be subject to a decision based solely on automated processing, including profiling: in the case of Public Administrations, these decisions can be made in cases of automated processing of personal data, as if they were established in pay-as-you-throw schemes. However, this right does not exist where the automated decision is necessary to conclude or perform a contract between the concerned data subject and a Controller; where it is based on the explicit consent of the concerned data subject; or when is authorised by EU Law or Member State Law.

Except in the latter case, when the decision is authorized by an EU or Member State rule, the concerned data subject has the right to obtain human intervention from the Data Processor, to express his or her point of view and to contest the decision.