

Lawfulness of processing and further processing



At a glance



- The grounds for processing personal data under the GDPR broadly replicate those under the Data Protection Directive.
- There are new limitations on the use of consent and the processing of children's online data.
- There are specific restrictions on the ability to rely on "legitimate interests" as a basis for processing and some clarification as to when it may be used.
- There is a non-exhaustive list of factors to be taken into account when determining whether the processing of data for a new purpose is incompatible with the purposes for which the data were initially collected.



To do list



Ensure you are clear about the grounds for lawful processing relied on by your organisation and check these grounds will still be applicable under the GDPR.



Where relying on consent, ensure quality of consent meets new requirements (see section on [consent](#) for further details).



Consider whether new rules on children's online data are likely to affect you, and, if so, which national rules you will need to follow (see section on [children](#) for further details).



Ensure that your internal governance processes will enable you to demonstrate how decisions to use data for further processing purposes have been reached and that relevant factors have been considered.



Degree of change

Commentary

Article 6(1) GDPR sets out the conditions that must be satisfied for the processing of personal data to be lawful (For provisions relating to sensitive data see section on [sensitive data and lawful processing](#)). These grounds broadly replicate those in the Data Protection Directive. These are:

6(1)(a) - Consent of the data subject

The GDPR approaches consent more restrictively; in particular it seeks to ensure that consent is specific to distinct purposes of processing (see section on [consent](#)). Particular conditions are imposed in the case of children online (See section on [children](#)).

6(1)(b) - Necessary for the performance of a contract with the data subject or to take steps preparatory to such a contract

No change to the position under the Data Protection Directive.

6(1)(c) - Necessary for compliance with a legal obligation

This replicates an equivalent ground under the Data Protection Directive. However, Article 6(3) and Recitals 41 and 45 make it clear that the legal obligation in question must be:

- an obligation of Member State or EU law to which the controller is subject; and
- “*clear and precise*” and its application foreseeable for those subject to it.

The recitals make it clear that the relevant “legal obligation” need not be statutory (i.e. common law would be sufficient, if this meets the “*clear and precise*” test). A legal obligation could cover several processing operations carried out by the controller so that it may not be necessary to identify a specific legal obligation for each individual processing activity.

6(1)(d) - Necessary to protect the vital interests of a data subject or another person where the data subject is incapable of giving consent

Recital 46 suggests that this ground may apply to processing that is necessary for humanitarian purposes (e.g. monitoring epidemics) or in connection with humanitarian emergencies (e.g. disaster response). The recital indicates that in cases where personal data are processed in the vital interests of a person other than the data subject, this ground for processing should be relied on only where no other legal basis is available.

6(1)(e) - Necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller

Article 6(3) and Recital 45 make clear this ground will apply only where the task carried out, or the authority of the controller, is laid down in Union law or Member State law to which the controller is subject.

6(1)(f) - Necessary for the purposes of legitimate interests

This ground can no longer be relied on by public authorities processing personal data in the exercise of their functions; Recitals 47-50 add more detail on what may be considered a “*legitimate interest*”. (See section on [legitimate interests](#) for further details).

Member States are permitted to introduce specific provisions to provide a basis under Articles 6(1)(c) and 6(1)(e) (processing due to a legal obligation or performance of a task in the public interest or in the exercise of official authority) and for other specific processing situations (e.g. journalism and research). This is likely to result in a degree of variation across the EU. (For further details see section on [derogations and special conditions](#)).

Further processing

The GDPR also sets out the rules (at Article 6(4)) on factors a controller must take into account to assess whether a new processing purpose is compatible with the purpose for which the data were initially collected. Where such processing is not based on consent, or on Union or Member State law relating to matters specified in Article 23 (general article on restrictions relating to the protection of national security, criminal investigations etc.), the following factors should be taken into account in order to determine compatibility:

- any link between the original and proposed new purposes;
- the context in which data have been collected (in particular the relationship between subjects and the controller);
- the nature of the data (particularly whether they are sensitive data or criminal offence data);
- the possible consequences of the proposed processing; and
- the existence of safeguards (including encryption or pseudonymisation).

Recital 50 indicates that further processing for archiving purposes in the public interest, for scientific and historical research purposes or for statistical purposes should be considered as compatible processing (see section on [derogations and special conditions](#)).



Where can I find this?

Lawful basis for processing (personal data)
Articles 6-10 Recitals 40 - 50