

Right to erasure and right to restriction of processing



At a glance



- More extensive, and unclear, rights are introduced: a right to be forgotten (now called erasure) and for processing to be restricted.
- Individuals can require data to be 'erased' when there is a problem with the underlying legality of the processing or where they withdraw consent.
- The individual can require the controller to 'restrict' processing of the data whilst complaints (for example, about accuracy) are resolved, or if the processing is unlawful but the individual objects to erasure.
- Controllers who have made data public which is then subject to a right to erasure request, are required to notify others who are processing that data with details of the request. This is a new wide-ranging and challenging obligation.



To do list



Ensure that members of staff and suppliers who may receive data erasure requests recognise them and know how to deal with them.



Determine if you work in a sector where compliance with erasure requirements would be so unreasonable and unwarranted that additional Member State-based exemptions should be sought.



Determine if systems are able to meet the requirements to mark data as restricted whilst complaints are resolved: undertake development work if needed.



Degree of change

Right to be forgotten

Individuals have the right to have their data 'erased' in certain specified situations - in essence where the processing fails to satisfy the requirements of the GDPR. The right can be exercised against controllers, who must respond without undue delay (and in any event within one month, although this can be extended in difficult cases).

When does the right apply?

- When data are no longer necessary for the purpose for which they were collected or processed.
- If the individual withdraws consent to processing (and if there is no other justification for processing).
 - There is a further trigger relating to withdrawal of consent previously given by a child in relation to online services. However, this seems to add nothing to the general principle that consent can be revoked and, where this is done, that the individual can require the data to be erased.
- To processing based on legitimate interests - if the individual objects and the controller cannot demonstrate that there are overriding legitimate grounds for the processing.
- When the data are otherwise unlawfully processed (i.e. in some way which is otherwise in breach of the GDPR).
- If the data have to be erased to comply with Union or Member State law which applies to the controller.

The last condition could, for example, apply if an individual considers that a data controller is retaining personal data where legislation stipulates that such data (for example an employment related check) must be deleted after a specified period of time.

The general catch-all allowing erasure requests to be made where data are '*unlawfully*' processed is potentially onerous: there are many reasons why data could be processed unlawfully under the GDPR (they may be inaccurate; an element of an information notice may not have been provided to the individual). However, it is not obvious that this should ground a right for the data to be erased. The equivalent provision the Data Protection Directive left more discretion requiring erasure 'as appropriate'. It will be important to see how Member States draft exemptions.

Data put into the public domain

If the controller has made personal data public, and where it is obliged to erase the data, the controller must also inform other controllers who are processing the data that the data subject has requested erasure of those data. The obligation is intended to strengthen individual's rights in an online environment.

The obligation is to take *reasonable steps* and account must be taken of available technology and the cost of implementation. However, the obligation is potentially wide-reaching and extremely difficult to implement: for example, as this is now public domain data, one question is how the original controller will be able to identify the controllers it needs to notify.

Other obligations to notify recipients

If the controller has to erase personal data, then the controller must notify any one to whom it has disclosed such data, unless this would be impossible or involve disproportionate effort.

Exemptions

The obligation does not apply if processing is necessary:

- for the exercise of the right of freedom of expression and information;
- for compliance with a Union or Member State legal obligation;
- for performance of a public interest task or exercise of official authority;
- for public health reasons;
- for archival, research or statistical purposes (if any relevant conditions for this type of processing are met); or
- if required for the establishment, exercise or defence of legal claims.

See section on [derogations and special conditions](#) for other occasions when exemptions may be relevant - if provided for under Union or Member State law.

Right to restriction of processing

This replaces the provisions in the Data Protection Directive on 'blocking'. In some situations, this right gives an individual an alternative to requiring data to be erased; in others, it allows the individual to require data to be held in limbo whilst other challenges are resolved.

What is restriction?

If personal data are 'restricted', then the controller may only store the data. It may not further process the data unless:

- the individual consents; or
- the processing is necessary for establishment etc. of legal claims; for the protection of the rights of another natural or legal person; or for reasons of important (Union or Member State) public interest.

Where the data are processed automatically, then the restriction should be effected by technical means and noted in the controller's IT systems. This could mean moving the data to a separate system; temporarily blocking the data on a website or otherwise making the data unavailable.

If the data have been disclosed to others, then the controller must notify those recipients about the restricted processing (unless this is impossible or involves disproportionate effort).

The controller must notify the individual before lifting a restriction.

When is restriction applicable?

- When an individual disputes data accuracy, then personal data will be restricted for the period during which this is verified;
- When an individual has objected to processing (based on legitimate interests), then the individual can require the data to be restricted whilst the controller verifies the grounds for processing;
- When the processing is unlawful but the individual objects to erasure and requests restriction instead; and
- When the controller has no further need for the data but the individual requires the personal data to establish, exercise, or defend legal claims.

This last condition could, for example, mean that controllers are obliged to retain data storage solutions for former customers if the personal data are relevant to proceedings in which the individual is involved.



Where can I find this?

<i>Right to erasure</i>	<i>Article 17 and 19</i>	<i>Recitals 65, 66, 73</i>
<i>Right to restriction</i>	<i>Article 18 and 19</i>	<i>Recitals 67 and 73</i>