Consent regarding personal information

PUBLIC BODIES AND COMPANIES

General principles of consent regarding personal information

Personal information is confidential. Its confidentiality stems from the right to privacy, allowing individuals to exercise control over how their information is used and disseminated. That is why consent is an important concept in applicable privacy laws.

As a representative of a public body or a company, your vigilance regarding consent helps preserve the right to privacy.

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Obtaining consent

- You must **obtain valid consent** from individuals to use or disclose their personal information or, in some rare cases, to collect it.
- **Exceptions to this requirement are provided in the legislation**, for both public bodies and companies. To learn more about these exceptions, refer to the pages of the sections that apply to you, as an organization or company representative.
- **Consent exceptions must be interpreted narrowly**. Wherever possible, the Commission encourages you to obtain consent rather than use the exception.

Consent and necessity standard

The necessity standard (private companies and public bodies) is a fundamental principle aimed at reducing situations where the personal information collected by private companies and public bodies creates an invasion of privacy for the persons concerned. This standard must prevail in all circumstances.

- The **necessity of collecting, using or disclosing personal information** to achieve your purposes must be assessed even before obtaining valid consent.
- According to applicable legislation, the collection of **personal information is necessary** if the **intended purpose is legitimate, important and real**, and if **the invasion of privacy is proportional** to that purpose.

- The collection, use or disclosure of the information is permissible if it is significantly more useful to the organization or company than detrimental to the person concerned.

Consent validity criteria

To be valid, a person's consent must be:

- **Clear**: obvious and given in a manner that demonstrates the actual will of the person concerned
- **Free**: involving a real choice and given without undue coercion or pressure
- **Informed**: specific, given with full knowledge and all the information needed to understand the scope of the consent
- **Specific**: given for a specific and clearly defined purpose
- **Temporary**: valid only for the time required to fulfill the purposes for which it was requested

As of September 22, 2023, valid consent must also be:

- **Granular**: requested for each specific purpose
- **Understandable**: requested in clear and simple terms
- **Distinct**: requested separately from any other information, when the request is made in writing

As of September 22, 2023, the Act clarifies the rules for **sensitive personal information**:

- Information is considered sensitive if it is of a medical, biometric or other intimate nature, or where its use or disclosure involves a high degree of reasonable expectation of privacy.
- Consent must be stated expressly, meaning that it must be explicitly given by a gesture or a statement (oral or written) attesting to the agreement of the person concerned. Express consent leaves no doubt as to the person's true will.
- Express consent is already mandatory if you use biometric technology to verify or confirm someone's identity.

The Commission has developed guidelines on consent validity criteria, following a public consultation. The final version of the document should be available in October 2023.

Collection, transparency and presumed consent

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As of September 22, 2023, there are new transparency obligations, in particular prior to the collection of personal information. These obligations could affect the requirement to obtain consent.

Consent of minors

As of September 22, 2023, there are new rules for youth consent:

- If the minor is under 14 years of age, consent to the use or disclosure of their personal information must be given by the parent or person with parental authority
- If the minor is 14 years of age or older, consent may be given by the minor themselves or by the parent or person with parental authority;
- If the collection is clearly for the benefit of the minor, organizations and companies will be able to proceed without parental consent

Some exceptions regarding consent

The applicable laws provide for certain exceptions to consent for both public bodies and companies. Learn more:

- Common exceptions (public bodies and private companies):
  - Disclosure of personal information in an emergency or to prevent an act of violence
  - Disclosure of personal information for the performance of contracts
  - Disclosure of personal information without consent for research purposes
- Exceptions for public bodies:
  - Disclosure of personal information without the consent of the person concerned
  - Use of personal information without the consent of the person concerned
  - Agreements on the disclosure of personal information
- Exceptions for private companies:
  - Disclosure of personal information without the consent of the person concerned
  - Use of information without the consent of the person concerned

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