

RESTRICTIONS UNDER ARTICLE 25 REG. (EU) 2018/1725



DPO Meeting 12 December 2018

RESTRICTION IS THE EXCEPTION TO THE RULE

Limited Application



Restriction \neq Denial

- Restrictions should leave intact the essence of the right



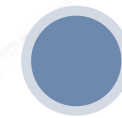
For Select Provisions

- Exhaustive list of articles
- No restriction on right to object (article 23)



By Select Instruments

- Mainly legal acts
- Possibility to base restriction on internal rules



Conditions

- Necessity
- Proportionality
- Exhaustive List of Grounds in Article 25

OVER TO YOU!

- You all have a case study on your desks – how would you deal with Ms Shootingstar's situation?
- 30 minutes in small groups.
- Guiding questions in hand-out.

THE CASE STUDY

1. RESTRICTIONS NOW ON THE RIGHT OF INFORMATION

2. A) IS IT NECESSARY TO IMPOSE A RESTRICTION? NECESSITY AND PROPORTIONALITY TEST
B) ARE THE INTERNAL RULES IN FORCE?
C) IS THE DATA PRIVACY NOTICE ON IDOC INVESTIGATIONS PUBLISHED? DOES IT CONTAIN INFORMATION ON RESTRICTIONS?



THE CASE STUDY

3. RESTRICTIONS CAN BE IMPOSED ON THE BASIS OF:

- ARTICLE 25(1) (B) PREVENTION, INVESTIGATION OF CRIMINAL OFFENCES AND
- ARTICLE 25(1) (F) PREVENTION, INVESTIGATION OF ETHICS FOR REGULATED PROFESSIONS

- ### 4. A RESTRICTION SHOULD BE TEMPORARY ON A CASE-BY-CASE BASIS SHOULD BE LIFTED AS SOON AS POSSIBLE A 'RESTRICTION WITHIN THE RESTRICTION' SHOULD APPLY

- ### 5. THE DPO SHOULD BE CONSULTED, IF POSSIBLE, ON THE NEED TO IMPOSE, MODALITIES AND FOLLOW UP.



THE CASE STUDY: THE RIGHT TO ACCESS

1. THE CONTROLLER SHOULD PROVIDE NOW A DATA PROTECTION STATEMENT TO THE DATA SUBJECT.

DATA SUBJECT SHOULD BE INFORMED THAT A RESTRICTION TOOK PLACE:
TRANSPARENCY.

2. GRANT ACCESS AS SOON AS IT IS NOT PREJUDICIAL FOR INVESTIGATION
IF SOME RIGHTS TO ACCESS STILL RESTRICTED, EXPLAIN PRINCIPAL REASONS.
PRINCIPAL REASONS FOR THE RESTRICTION+ RIGHT TO LODGE A COMPLAINT TO THE
EDPS (ARTICLE 25(6)).



THE CASE STUDY: THE RIGHT TO RECTIFICATION

1. TWO OPTIONS

- A. ACCEPT NEW DIPLOMA WITH A NOTE TO THE FILE ON COMPLETENESS (NEVER REMOVE ORIGINAL DIPLOMA).
- B. RESTRICT THE RIGHT OF RECTIFICATION GIVEN THAT THE INVESTIGATION IS GOING ON.

2. REFER THE CASE TO THE EDPS (DATA PROCESSED CORRECTLY OR NOT)



ASSESSING THE NECESSITY AND PROPORTIONALITY OF THE RESTRICTION

- Prepare, keep and review an internal assessment note of the necessity and proportionality [Accountability]
 - Annex II of the EDPS Guidance Document can provide inspiration
- Necessity:
 - Strict Necessity
 - EDPS Necessity Toolkit, available on the EDPS website
- Proportionality:
 - No need for a proportionality check if necessity cannot be shown
 - EDPS Proportionality toolkit (forthcoming)
- The overall assessment should be mentioned in the internal rules.

INFORMATION ABOUT RESTRICTIONS

ENSURE THAT THERE IS A DATA PROTECTION NOTICE COVERING POTENTIAL RESTRICTIONS

General

- RESTRICT – DO NOT DENY.
- ENSURE THAT THERE IS EX POST INFORMATION ABOUT RESTRICTION OF ANY RIGHT TO INFORMATION.
- ENSURE THAT THERE IS A PROPORTIONALITY AND NECESSITY TEST ON THE NEED, REASONS AND DURATION OF THE RESTRICTION FOR ACCOUNTABILITY PURPOSES.
- *The data subject has a right to know, after the justifying scenario has finished, that there has been a restriction.*

Specific

where possible

Specific

Thank you for your attention!

For more information:

www.edps.europa.eu

edps@edps.europa.eu



@EU_EDPS

THROUGH A GENERAL LEGAL FRAMEWORK, FOR AN EXHAUSTIVE LIST OF ARTICLES



2 Types of Instruments

Based on a legal act (main option) **OR** based on internal rules

For (only) 11 Provisions

Articles 14 – 22

- Information & Access
- Rectification & Erasure
- Restriction of processing
- Data Portability

Articles 35 and 36

- Communication of data breach
- Confidentiality of elec. communications

Not for right to object and automated individual decision-making