



FACTSHEET #7

INFORMED CONSENT

WHY DO YOU NEED TO KNOW ABOUT INFORMED CONSENT?

Personal data can only be processed in certain circumstances, which are outlined in the General Data Protection Regulation (GDPR; see factsheet #2). These are known as the **lawful basis** for data processing, and the basis that data processors often use is **informed consent**. This means that they have asked for - and received - consent before using their personal data. This factsheet explains what informed consent is, and how it is applied in terms of personal data.

KEY MESSAGES

- Consent is a **legal basis** under which data controllers can process personal data.
- **Other legal bases** include contracts, compliance with a legal obligation, actions to protect vital interests, to perform a task in the public interest, and legitimate interests pursued by the controller or by a third party (Article 6 of the GDPR).
- According to GDPR Article 4, paragraph 11, consent should be “**freely given, specific, informed and unambiguous**”.
- When informing people about how their data will be used, the **guiding principles** should be ‘intelligibility, accessibility and clearness’ - but this is often not the case.
- For example, the information given to data subjects does not always clearly explain the **risks and details of data processing**.

VULNERABLE PEOPLE AND INFORMED CONSENT

For consent to be **informed**, the information provided should be tailored to the data subject - particularly if they are vulnerable. But there are **different understandings of vulnerable individuals within European law**, so assessing this is often left up to the data controller. **Power imbalances** can also be an issue. For example, processing employees’ personal data on the basis of informed consent raises issues about whether they truly had a free choice. Employees may consent to their data being used, but they feel obliged to give it.



INFORMED CONSENT AND DIGITAL PLATFORMS

Article 7 of the GDPR protects citizens against **commercial practices that tie the performance of a contract** to “consent to the processing of personal data that is not necessary for the performance of that contract”. But this is problematic, as many digital companies (e.g. Google), whose services are provided free of charge, depend on having the user’s consent to data processing. In many instances, people will give their consent (i.e. click ‘I agree’) without being fully informed on how their data will be used.

WHAT YOU CAN DO

- Read terms and conditions carefully before giving your consent to the processing of personal data.
- If there is something you don’t understand, ask for it to be explained more clearly.
- Withdraw your consent if you change your mind: under the GDPR, consent can be withdrawn at any time, and the process should be as easy as giving consent (i.e. by ticking a box).
- Withdrawal of consent should come without any detriment to your rights.
- If you think your personal data has been processed unlawfully, contact your country’s Data Protection Authority (bit.ly/3vRb7Ow).

FIND OUT MORE

READ: PANELFIT’s ‘Issues and gaps analysis on informed consent in the context in ICT research and Innovation’ focuses on this subject (bit.ly/3vNaRAd), and the Article 29 Data Protection Working Party’s guidelines on consent are also relevant (bit.ly/3jjaJWP). This article explains how online behavioural advertising relies on the use of personal data (bit.ly/2SmDA1h), while this document from the Irish Data Protection Commission explains when and how the different legal bases for data processing apply (bit.ly/35QciDi).

WATCH / LISTEN: This PANELFIT monthly chat with Alessandro Ortalda covers the ‘Issues and gaps analysis on informed consent’: bit.ly/3vQ1a46