Law | GDPR: Opening Clauses

OC.06 Restrictions Data Subjects' Rights

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The GDPR contains various opening clauses that allow member states (and the Union) to restrict data subject rights:

? Individual data subject rights contain their own opening clauses.

? **Art. 23 I DS-GVO** allows the Member States (and the Union) to impose restrictions on data subject rights. These must respect the essence of fundamental rights and freedoms and represent a necessary and proportionate measure in a democratic society.

? According to **Art. 85 II DS-GVO**, Member States shall provide for exemptions or derogations also from data subject rights in order to reconcile data protection with freedom of expression and information.

? According to **Art. 89 DS-GVO**, Member States may provide for derogations for certain privileged processing purposes.

If one relates these member state powers of restriction to each individual data subject right, one arrives at 45 opening clauses:

Information obligtions according to Art. 13 GDPR may be restricted by Member States (and the Union) as follows:

Art. 13 in conjunction with 23: *various reasons*

Art. 13 in conjunction with 85 II: freedom of expression and information

Information obligtions according to Art. 14 GDPR may be restricted by Member States (and the Union) as

follows:

Art. 14 V c: *obtaining or disclosure expressly laid down in Member State law*

Art. 14 V d: *obligations of professional secrecy regulated in Member State law*

Art. 14 in conjunction with 23: *various reasons*

Art. 14 in conjunction with 85 II: *freedom of expression and information*

The right of access according to Art. 15 I/II GDPR may be restricted by Member States (and the Union) as follows:

Art. 15 I/II in conjunction with 23: *various reasons*

Art. 15 I/II in conjunction with 85 II: *freedom of expression and information*

Art. 15 I/II in conjunction with 89 II: scientific or historical research purposes or statistical purposes

Art. 15 I/II in conjunction with 89 III: archiving purposes in the public interest

The right to a copy according to Art. 15 III GDPR may be restricted by Member States (and the Union) as follows:

Art. 15 III in conjunction with 23: *various reasons*

Art. 15 III in conjunction with 85 II: *freedom of expression and information*

Art. 15 III in conjunction with 89 II: scientific or historical research purposes or statistical purposes

Art. 15 III in conjunction with 89 III: archiving purposes in the public interest

The right to rectification according to Art. 16 (1) GDPR may be restricted by Member States (and the Union) as follows:

Art. 16 (1) in conjunction with 23: *various reasons*

Art. 16 (1) in conjunction with 85 II: *freedom of expression and information*

Art. 16 (1) in conjunction with 89 II: scientific or historical research purposes or statistical purposes

Art. 16 (1) in conjunction with 89 III: archiving purposes in the public interest

The right to completion according to Art. 16 (2) GDPR may be restricted by Member States (and the Union) as follows:

Art. 16 (2) in conjunction with 23: *various reasons*

Art. 16 (2) in conjunction with 85 II: *freedom of expression and information*

Art. 16 (2) in conjunction with 89 II: scientific or historical research purposes or statistical purposes

Art. 16 (2) in conjunction with 89 III: archiving purposes in the public interest

The right to erasure according to Art. 17 GDPR may be restricted by Member States (and the Union) as follows:

Art. 17 III b: *legal obligations by Member State law*

Art. 17 I/II in conjunction with 23: *various reasons*

Art. 17 I/II in conjunction with 85 II: *freedom of expression and information*

The right to restriction of processing according to Art. 18 GDPR may be restricted by Member States (and the Union) as follows:

Art. 18 in conjunction with 23: *various reasons*

Art. 18 in conjunction with 85 II: *freedom of expression and information*

Art. 18 in conjunction with 89 II: scientific or historical research purposes or statistical purposes

Art. 18 in conjunction with 89 III: archiving purposes in the public interest

The right to notification according to Art. 19 GDPR may be restricted by Member States (and the Union) as follows:

Art. 19 in conjunction with 23: *various reasons*

Art. 19 in conjunction with 85 II: *freedom of expression and information*

Art. 19 in conjunction with 89 III: archiving purposes in the public interest

The right to data portability according to Art. 20 GDPR may be restricted by Member States (and the Union) as follows:

Art. 20 in conjunction with 23: *various reasons*

Art. 20 in conjunction with 85 II: *freedom of expression and information*

Art. 20 in conjunction with 89 III: archiving purposes in the public interest

The right to object according to Art. 21 GDPR may be restricted by Member States (and the Union) as follows:

Art. 21 in conjunction with 23: *various reasons*

Art. 21 in conjunction with 85 II: *freedom of expression and information*

Art. 21 in conjunction with 89 II: scientific or historical research purposes or statistical purposes

Art. 21 in conjunction with 89 III: archiving purposes in the public interest

The right not to be subject to individual decision-making (Art. 22 I GDPR) may be restricted by Member States (and the Union) as follows:

Art. 22 in conjunction with 23: *various reasons*

Art. 22 II b: *authorization of individual decision-making by Member State law*

Art. 22 in conjunction with 85 II: *freedom of expression and information*

The notification obligation according to Art. 34 GDPR may be restricted by Member States (and the Union) as follows:

Art. 34 in conjunction with 23: *various reasons*

Art. 34 in conjunction with 85 II: *freedom of expression and information*