

CO.06 Respect for Private Life

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According to Art. 7 CFR, private and family life are protected by fundamental rights:

“Everyone has the right to respect for his or her private and family life, home and communications.”

The processing of personal data by the controller may serve the realisation of this fundamental right.

This is recognised by Art. 1 II GDPR, according to which the Regulation protects the *“fundamental rights of natural persons”*, which includes the fundamental rights of the controller [see Tile ...] and other persons [see Tile ...]. It is confirmed by Rec. 4 (2) GDPR:

“The right to the protection of personal data is not an absolute right; it must be [...] balanced against other fundamental rights, in accordance with the principle of proportionality.” **[see also [Tile CO.01](#)].**

The fundamental right to private life is explicitly mentioned in Rec. 4 (3) GDPR: *“This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications [...]”*

In accordance with this, the German Federal Constitutional Court states: The right to informational self-determination *“must be balanced against the freedom to gather, process and use information for one’s own purposes, including for changing purposes”* **[[BVerfG, Order of 6 November 2019 - 1 BvR 16/13 -, para. 87](#)].**

This multidimensionality of fundamental rights is insufficiently recognised by the GDPR as a whole. Among the rights and freedoms of natural persons that the GDPR seeks to protect, the fundamental rights of the controller are hardly explicitly taken into account.

Therefore, the fundamental rights of the Charter of Fundamental Rights must be used for the

interpretation of the term "rights and freedoms". If processing by the controller is necessary for the development of the right to private life, this can be based on Art. 7 CFR.

Example: The storage of the names, addresses and telephone numbers of one's friends and acquaintances in an online address book may indeed be an impairment of the rights and freedoms of the friends and acquaintances. At the same time, however, it is also an expression of one's right to private life to store the data of one's friends and acquaintances.

The household exemption of Art. 2 II c GDPR is a consequence of the right to private life. In the absence of provisions in the GDPR, the principle of proportionality (Art. 52 I CFR) must be applied to balance the rights of the data subject and the right to privacy of the controller (see Practical Concordance, [Tile P.04](#)).