



COMECE Secretariat contribution
European Data Protection Board public consultation
Guidelines 01/2022 on data subject rights - Right of access (Version 1.0)

Introduction

The COMECE Secretariat would like to express its appreciation for the valuable support and guidance provided by the European Data Protection Board to all actors that process data in the EU, including Churches and religious associations or communities.

EDPB Guidelines are an effective tool to better understand the implications and intricacies of a complex text like the GDPR and they genuinely contribute to ensuring greater legal certainty.

This is also the case with the draft Guidelines on the right of access. In welcoming this text, the Secretariat of COMECE, supported by its Legal Affairs Commission, is pleased to formulate some constructive remarks and suggestions concerning the document.

General remarks

In general, while protectiveness towards Data subjects is rightly embedded in the GDPR architecture, care should also be taken that Data controllers and processors are not unduly burdened.

The GDPR foresees an obligation for Data controllers to facilitate the exercise of Data subjects' rights. However, Data subjects should also be encouraged to genuinely interact and dialogue with Data controllers, ensuring clarity and precision to their requests. DPAs should also attentively monitor eventual abusive requests (cf. paragraph 186).

An element that could be more developed in the draft Guidelines is about the important role Data Protection Officers can play in this regard, especially in ensuring a sound recognition of the nature of Data subjects' requests.

Paragraphs 22 and following

While the part on “Providing a copy” is useful and provides a number of clarifications, in our view it could be strengthened and further amplified.

Paragraph 77

We find the clarification at paragraph 77 on entities processing special categories of data important and to be preserved. This reference is also relevant for the Church, which falls under such domain by processing data revealing religious beliefs.

Furthermore, a number of processing activities carried out by the Church are taking place in a traditional/non-electronic context, in which other means of verification may therefore not be available.

We would recommend stating that the clarification of paragraph 77 applies “...in particular” (not simply “...for example”) to entities processing special categories of personal data.

Paragraphs 102 and following

At page 3 of the draft Guidelines it is stated that *“The right of access refers to personal data concerning the person making the request. This should not be interpreted overly restrictively and may include data that could concern other persons too...”*. The point is developed for instance at paragraph 104. We are doubtful about the necessity of this extension.

Furthermore, more clarity should be provided on the coordination of this statement with paragraphs 44 (*“...a request for information about... data that does not concern the requesting person or the person on whose behalf the authorised person made the request, will not be within the scope of the right of access”*), 46 (*“As a general rule, a request may only concern the data of the person making the request. Access to other people’s data can only be requested subject to appropriate authorization”*) and 102 (*“The right of access can be exercised exclusively with regard to personal data relating to the data subject requesting access or, where applicable, by an authorised person or proxy... There are also situations in which data do not have a link to the person exercising the right of access but to another individual. The data subject is however, only entitled to personal data relating to themselves excluding data which exclusively concern someone else”*).

Paragraph 109

The reference to the fact that *“...in relation to any further access request of the same data subject, the controller should not inform the data subject only on the mere changes in the personal data processed or the processing itself since the last request, unless the data subject expressly agrees to doing so”* may prove excessive and should be clarified, also in view of avoiding undue burdens for Data controllers.

Paragraph 112

While we are fully aware of the relevance of the legal basis for processing in the context of the right of access, we are doubtful about what is stated at paragraph 112, in particular on the fact that “...*in order to facilitate the exercise of data subjects’ rights in line with Art. 12(2), the controller is recommended to also inform the data subject as to the applicable legal basis for each processing operation. In any event, the principle of transparent processing requires that the information on the legal bases of the processing be made available to the data subject in an accessible way (e.g. in a privacy notice)*”. Considering that, as underlined by the draft Guidelines, the requirement is not foreseen by Article 15.1, point a, it may have to be a responsibility of the Data subject to specify its request on this point.

Paragraph 124

We fully support the reference to the fact that it is important “...*to keep in mind that the process to retrieve data should also be designed in a data protection friendly way, so that it doesn’t compromise the privacy of others...*”, as implications for other actors than the Data subject should be fully taken into account.

Paragraph 130 and following

In our view, access to sacramental records held by the Church (e.g. baptism records) could be included in paragraph 131 among the examples in which “different means to provide access” are appropriate (e.g. oral information, inspection of files). This in view of the sensitivity of the data contained in such records and of the particular modalities in which they are kept. In most cases, processing by Church structures (e.g. parishes) falls in the category of small scale processing mentioned in paragraph 133.

Paragraphs 141 and following

The part concerning a “layered approach” would benefit from further clarifications. As the goal of this approach is to address situations where vast amount of information is processed, we do not think this should be limited to the online environment, as implied paragraph 141.

Paragraph 168

We agree that Recital 63 should be considered to provide mere exemplifications. However, as Recital 4 GDPR provides a list of core fundamental rights and freedoms to be respected in particular in the GDPR context, we think that Article 15.4 GDPR should be read in conjunction with it. Recital 4 also refers to freedom of religion and to respect for religious diversity.

Furthermore, we wonder whether the reference to “confidentiality of correspondence” is sufficiently broad. In our view, this recommendation should be extended to include confidentiality and professional or other equivalent secrecy obligations.

Paragraph 169

We deem it appropriate to include Data controllers/processors in the concept of “Others”.

Paragraph 170

The example provided in the box is interesting and may be relevant for similar situations faced by the Church and related organisations. However, it could be further developed and specified (for instance, providing more details on the examination of rights and freedoms, exemplifying on possible interests at play).

Paragraph 175

This paragraph would require better clarifications and explanations. In the current formulation it provides an extremely narrow and marginal scope to the provision.

*Brussels, 11 March 2022
COMECE Secretariat*