Annex 5 (AL)

**Checklist**

**on the application of a restriction under Article 25 in a concrete case**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Criterion** | **Reference/evidence/citation of Internal Rules (IR)** | **Assessment (traffic lights) / comments** |
|  | A necessity and proportionality test on the need for restriction has been performed (a-e); |  |  |
|  | Restriction provided for by law, |  |  |
|  | respects the essence of the rights |  |  |
|  | genuinely meets objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others |  |  |
|  | necessary (no alternative equally efficient means to achieve objective), see also section 4 below) |  |  |
|  | proportional |  |  |
|  | Data subjects have been informed using a general data protection notice which includes information on potential restrictions; |  |  |
|  | Restriction was decided on a case-by-case basis only (no indication of blanket measure, considerations regard specific case) |  |  |
|  | Restriction to the least extent possible (a ‘restriction within the restriction’ should apply as regards the rights and the extent of the restriction) |  |  |
|  | Restriction is temporary and will lifted if the underlying reasoning for its existence no longer applies |  |  |
|  | The DPO was consulted before and during the restriction (the controller should involve the DPO throughout the procedure and document this consultation) |  |  |
|  | Restriction has been documented for accountability purposes |  |  |
|  | Restriction is being monitored on a regular basis. |  |  |

The EDPS Guidance on Article 25 of the Regulation 2018/1725 and internal rules updated on 24 June 2020[[1]](#footnote-1) contains the following guidance on the application of a restriction under Article 25 in a concrete case:

R1: Perform a necessity and proportionality test on the need for restriction[[2]](#footnote-2);

R2: Inform data subjects using a general data protection notice which includes information on potential restrictions;

R3: Restrict on a case-by-case basis only;

R4: Restrict to the least extent possible (a ‘restriction within the restriction’ should apply as regards the rights and the extent of the restriction);

R5: Restrictions should be temporary and be lifted when their causes no longer apply;

R6: Consult the DPO before and during the restriction (the controller should involve the DPO throughout the procedure and document this consultation);

R7: Document restrictions for accountability purposes;

R8: Monitor your restriction on a regular basis.

In phase a) of the audit, DPOs will be invited to -in cooperation with the staff member(s) responsible on behalf of the controller- provide replies (**self-assessment**) by filling in the above checklist and provide a copy of the decision taken (with the name of the data subject and any other identifiers blackened out).

During phase b) of the audit, the team leader is going to verify whether the decision identified in line with the checklist and evaluate the pieces of evidence submitted as well as the self-assessment provided.

1. See <https://edps.europa.eu/sites/edp/files/publication/20-06-24_edps_guidance_on_article_25_of_the_new_regulation_and_internal_rules_en.pdf>. [↑](#footnote-ref-1)
2. GL §18: “To be lawful, any limitation on the exercise of the fundamental rights protected by the Charter must comply with the following criteria, laid down in Article 52(1) of the Charter:

   it must be provided for by law,

   it must respect the essence of the rights,

   it must genuinely meet objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others,

   it must be necessary and

   it must be proportional.” [↑](#footnote-ref-2)