EDPS RECOMMENDATION N. 6

INTERNAL POLICY

REQUEST OF ACCESS TO DATA BY DATA SUBJECTS

Processing of data on FAR

FAR enables the exchange of information between Frontex and the Member States on returnees within the framework of return operations. This exchange includes personal data which is processed by Frontex with the purpose of coordinating and organising return operations. The legal basis for the processing of data of returnees is to be found in Articles 27, 28 and 48 of the European Border and Coast Guard Regulation.

Rights of the Data Subject

Under Article 17 of the Data Protection Regulation (DPR), data subjects have the right of access to their own personal data, including 'communication in an intelligible form of the data [...] and of any available information as to their source.' Under Article 18 of the same Regulation, data subjects have the right to 'obtain from the controller the rectification without delay of inaccurate or incomplete personal data.' Restrictions are possible on a case-by-case basis under Article 20, e.g. where these are necessary for safeguarding public security.

Right of Access Request

In particular, when confronted with a Right of Access request, the following information needs to be provided to the requestor ('data subject'):

1. Confirmation about whether his/her data are being processed or not.

2. In case it is a yes, access to the personal data processed via a copy of the data (if the request is done electronically, the copy of the data will be also provided by using an electronic form).

3. The purpose for the processing.

4. The categories of data processed.

5. The recipients to whom the data has been disclosed to, and if there has been any international data transfer (outside the EEA space).

6. The retention period.

7. The existence of the right to request rectification (with limitations), right to request restriction of the processing of right to object to the processing of personal data.

8. Right to lodge a complaint to the EDPS.

9. The source where the data comes from.

10. The existence of automated decision-making, including profiling.

11. If an international data transfer takes place, the country the data has been sent to and the appropriate safeguards.

The obligation is to reply to the requestor within 30 days since the request arrives.

In order to ensure the correct application of the DPR and in implementing the EDPS recommendations on FAR, the following procedural steps are to be taken upon receipt of a request for access to data. These steps are to be taken in close consultation with the DPO, who needs to be kept informed.

1. Once a request of access to data reaches FAR.personaldata@frontex.europa.eu mailbox it is then forwarded to Registration for recording purposes.

2. The person handling the request sends back an email to the requestor acknowledging the receipt of the request and asking for verification of identity.

3. The appointed ECRet staff assesses each request on an individual basis (e.g.: checks the system for the individual).

4. If there is no hit on the individual, the requestor will be informed that ECRet holds no information at this current moment about the requestor.

5. If there is a hit and the request is assessed positively (i.e.: we provide the information), ECRet prepares the reply to be checked and sent out by the DPO.

6. If a negative assessment is made (i.e.: information will not be released or only partially released), ECRet consults the DPO with a justification as to why access to data should be restricted or deferred.

7. In case the DPO agrees to restrict or defer access to data, a draft reply is prepared by ECRet to be checked and sent out by the DPO to the requestor.

8. In case the DPO does not agree to restrict or defer the access to data, ECRet is invited to reassess the request on the basis of the arguments provided by the DPO.

9. If ECRet agrees with the DPO a draft reply is prepared by ECRet to be checked and sent out by the DPO to the requestor.

10. If ECRet does not agree with the DPO it must provide additional information on why access should be restricted. The DPO is then consulted again until agreement is reached, bearing in mind DPO's role to advise the controller. Once agreement is reached, a draft reply is prepared by ECRet to be checked and sent out by the DPO to the requestor.

11. ECRet to keep a log registering individual restrictions of the right of access to data.

Right of Rectification Request

In order to ensure the correct application of the DPR and in implementing the EDPS recommendations on FAR, the following procedural steps are to be taken upon receipt of a request for rectification of data. These steps are to be taken in close consultation with the DPO, who needs to be kept informed.

1. Once a request for rectification of data reaches FAR.personaldata@frontex.europa.eu mailbox it is then forwarded to Registration for recording purposes.

2. The person handling the request sends back an email to the requestor acknowledging the receipt of the request and asking for verification of identification and evidence of the inaccuracy of the data (if not already provided). The requestor will also be informed that factual data can only be contested upon provision of a piece of evidence of the same legal value than the one contested.

3. The appointed ECRet staff assesses each request on an individual basis (e.g.: checks the system for the requested data).

4. If there is no hit on the data, the requestor will be informed that ECRet holds no information at this current moment about the requested data.

5. If there is a hit and the request is assessed positively (i.e.: we rectify the information), ECRet prepares the reply to be checked and sent out by the DPO. At the same time, ECRet will rectify the data in FAR and notify the concerned Member State that a rectification of this data has been carried out.

6. If a negative assessment is made (i.e.: information will not be rectified), ECRet consults the DPO with a justification as to why data will not be rectified.

7. In case the DPO agrees with ECRet to deny the request of rectification, a draft reply is prepared by ECRet to be checked and sent out by the DPO to the requestor.

8. In case the DPO does not agree to deny the right of rectification, ECRet is invited to reassess the request on the basis of the arguments provided by the DPO.

9. If ECRet agrees with the DPO a draft reply is prepared by ECRet to be checked and sent out by the DPO to the requestor.

10. If ECRet does not agree with the DPO it must provide additional information on why the data should not be rectified. The DPO is then consulted again until agreement is reached, bearing in mind DPO's role to advise the controller. Once agreement is reached, a draft reply is prepared by ECRet to be checked and sent out by the DPO to the requestor.

11. ECRet to keep a log registering individual restrictions of the right of rectification to data.

Log of individual restrictions of the Right of Access

Request of Access as per Article 17 of Regulation 1725/2018							
Data Subject	Date of receipt	Categories of data requested	Justification for restricting	Justification for deferring	DPO Assessment (yes/no)	Date of reply	Content of response
A							
B							
C							
D							
E							
F							

Log of individual restrictions of the Right of Rectification

Request of Rectification as per Article 18 of Regulation 1725/2018							
Data Subject	Date of receipt	Request for rectification (type of data)	Justification provided by requestor to rectify	Justification for restricting the right of rectification	DPO Assessment (yes/no)	Date of reply	Content of response
A							
B							
C							
D							
E							
F							