

DATA PORTABILITY (ART. 20 GDPR)

"Empower data subjects regarding their own personal data, as it facilitates their ability to move, copy or transmit personal data easily from one IT environment to another"

WHAT?

- A right to receive a subset of personal data
- A right for transmission personal data from one controller to another controller (without hindrance, but only when technically feasible)
- The controller does not have the responsibility that the receiving controller is compliant with Privacy and Data Protection legislations
- A processor should assist the controller in exercising the data portability and all other rights
- A data subject can continue to use and benefit from the services of the controller after the request of data portability is exercised
- A case by case review whether a specific law or the GDPR right to data portability applies (e.g. PSD2 vs. GDPR)

WHEN?

- Applicable when the processing is based on: **Consent and/or Contract**
- Applicable only when the **processing is carried out by automated means**

PERSONAL DATA?

- **Only personal data.**
- Important: pseudonymised personal data falls under the scope when it can be linked to the data subject
- **Which personal data?**
- 1) actively and knowingly provided by the data subject
- 2) observed data provided by the data subject by using the services
- **Out of scope:** inferred and derived data created by the controller on the basis of the data provided by the data subject

OTHER DATA SUBJECTS?

- Data portability should not adversely affect the rights and freedoms of others
- A receiving controller should not use the personal data of other data subjects for his own purposes

"Data Portability will facilitate switching between two controllers and foster the development of new services in the context of the single digital market strategy"

PIOR INFORMATION?

- The controller needs to inform the data subject about the existence of right of data portability
- The privacy notice shall explain the **difference between the right to access and the right to data portability** and which personal data will be received in both cases
- The receiving controller needs to provide the data subject with the information on which personal data is necessary to execute their services

PROVIDING THE PERSONAL DATA?

- Two options are most likely to work
 - 1) **Direct transmission** of the overall dataset of the portable personal data
 - 2) **An automated tool** that allows extraction of the relevant personal data
- The two options need to ensure that the personal data can be **re-used** after making it portable.
- The exact format in which the data will be transmitted depends on the sector. If there is no common used format. Controllers will need to use commonly used open formats along with the appropriate security measures
- Data Portability strives for **interoperable systems**, not the high costs compatible systems
- Security measures:
 - 1) Controller is responsible for the safe personal data transmission
 - 2) Controller is responsible for the protection of personal data that remains in their systems

COMMUNICATION

- Identification of the data subject will most likely already exist in the organisation -identifying someone cannot happen with disproportionate measures
- **An answer to the request has to be provided within one month - even in the case of a refusal**

CONCLUSION

The A29 WP provides these guidelines with concrete examples, and stipulates solutions to the newly introduced right. However, as it was stated by the A29 WP without the coordination and help from key industry players and trade associations, right to data portability will be very difficult or nearly impossible to implement