

DATA SUBJECT’S CONSENT AS AN EXCEPTION TO THE RESTRICTIONS PROVIDED IN GDPR

The GDPR introduces onerous obligations for data controllers and processors, and also provides teeth to the regulator to enforce with significant fines and penalties. ‘Consent’ of the data subject serves as an exception to restrictions under the GDPR, as was the case with prior legislation however, GDPR introduces a higher threshold for consent. Below is a summary of the applicability of ‘consent’ as an exception to various restrictions under the GDPR.

ISSUE	RESTRICTION	CONSENT AS AN EXCEPTION
<p>1. Processing of Certain Special Categories of Data</p>	<p>The GDPR prohibits processing of special categories of personal data, such as data:</p> <ul style="list-style-type: none"> • revealing racial or ethnic origin, • political opinions, religious or • philosophical beliefs, or • trade union membership, and • the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, • data concerning health or data concerning a natural person's sex life or 	<p>An exception to this prohibition is when explicit consent has been given by the data subject for a specified purpose, except where Union or Member State law provide that the prohibition may not be lifted by the data subject.</p>

	sexual orientation.	
2. Transfer of data to a third country	GDPR provides restriction on transfer of personal data in case of absence of appropriate safeguards in the third country.	The exception to this restriction is that when the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject. However, this does not apply to public authorities in the exercise of their powers.
3. Transfers or Disclosures not authorized by law	Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may be enforced or recognized only on certain condition.	<ul style="list-style-type: none"> ○ The condition for enforcing this decision is that there should be an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State, without prejudice to other grounds for transfer ○ Consent of the data subject is not provided as an exception here.
4. Right To restriction on Data Processing	Under Article 18 Data Subject has the right to restrict the data processing on certain grounds.	The controller may continue the process if it obtains data subject's consent.
5. Processing	There are several conditions laid down to ensure that the	<ul style="list-style-type: none"> ● One of the conditions that can make any processing

	processing is lawful.	<p>lawful is when the data subject has given consent to the processing of his or her personal data for one or more specific purposes.</p> <ul style="list-style-type: none"> • Moreover the controllers should be able to demonstrate that consent was given by the data subject to the processing.
6. Automated Decision Making	The data subject shall have the right <i>not to be subject</i> to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.	This Right shall not apply if the decision has been made with data subject's explicit consent.

It should further be noted that Recital 43 of the GDPR adds a presumption that consent is not freely given if there is “*a clear imbalance between the data subject and the controller, in particular where the controller is a public authority.*” Importantly, a controller may not make a service conditional upon consent, unless the processing is necessary for the service. Further, consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the consent despite such consent not being necessary for such performance.