

DATA PROTECTION ESSENTIAL PRINCIPLES

Legal bases for data processing

Legal bases for Data processing

In order to be implemented, any data processing must be based on one of the "legal bases" provided for by the GDPR. **The prior determination of the appropriate legal basis is a key step in the data management cycle.**

There are **6 legal bases for data processing**. No one basis is "better" or more important than the others. **The most appropriate basis to use will depend on your purpose and your relationship with the data subject.**

Most legal bases require that **the processing is "necessary" for a specific purpose.**



If you can reasonably achieve the same purpose **without** the processing, you will have no legal basis.

> **The question of « WHY » are we processing this data?**

Legal bases for Data processing

1 Vital interest

Likely to be particularly relevant for **emergency medical care**, where you need to process personal data for medical purposes, and **the patient is unable to give consent to the processing**.

You cannot invoke vital interest for health data or other special categories of data if the person is capable of giving consent, **even if they refuse it**.



2 Public mission or interest

▪ "In the execution of public authority"

These are public functions and powers set out in the law.

- To **carry out a specific task of public interest** provided by the law. (ICO)

E.g. A humanitarian mandate established under national or international law to perform specific tasks, to the extent that the processing of personal data is necessary for the performance of those tasks, such as ICRC, UN, UNHCR, UNICEF, WFP, IOM, etc.

Legal bases for Data processing

3 Legitimate interest

Most flexible legal basis for processing... but not always the most appropriate!

When people's data are used in a way that they can **reasonably expect** (a very subjective notion) and that has **minimal impact on privacy**; or when there is a compelling justification for the processing.

If you choose to rely on legitimate interests, an **additional responsibility is assumed by the data controller** to take into account and protect the rights and interests of individuals.



Legitimate interests can be your own or those of a third-party.

E.g. The GDPR specifically mentions the use of customer or employee data, marketing, fraud prevention, intra-group transfers or IT security as potential legitimate interests, but this list is not exhaustive.

4 Contract execution

The appropriate legal bases when:

- A **contract is entered into with a person** and his/her personal data must be processed to comply with your contractual obligations.
- A **contract has not been concluded with the person, yet, but he/she has asked you to do something** (e.g.: provide a quotation) and you need to process personal data to address the request (ICO).

This will generally be the case with regard to the processing of data for the following purposes:

- HR management of personnel files, including recruitment
- Management of relations with suppliers of goods/services
- Relations with donors (ICRC)



5 Legal obligations

Legal basis to **comply with a common law or statutory obligation**.

This may be the case, for example, in the field of labour law, or for organizations without privileges and immunities, if necessary to **comply with an enforceable local legal obligation**.

Humanitarian organizations should consider **whether a legal obligation to disclose data applicable to them may expose data subjects** (program beneficiaries) to a **risk of repression or harm**, in which case they should consider not engaging in data collection.



Legal bases for Data processing

6 Consent

The natural person agrees to the processing of his/her data.

Informed consent is any freely given, specific and informed indication of the data subject's agreement.

Appropriate if the individual has a **real choice and control over how their data will be used**, and if **building trust and commitment** is desired.

Consent can be a very technical and context-specific issue, with many legal and regulatory implications.



If you cannot offer genuine choice, consent is not appropriate.

If you process personal data anyway without consent, asking for consent is misleading and inherently unfair (ICO).



Legal bases for Data processing

6 Consent

All surveys must provide for **individuals an informed consent**.

This implies that those responsible for the survey are required to **clearly present** to respondents **all the reasons and justifications for the data collection**.

This consent must be **obtained at the beginning of the survey**.

It is **free of any constraint** (respecting the free choice of people to accept or refuse to answer the questions).





What about your programs?

Identify one or two personal and/or sensitive data that you are using in your activities.

What would be the **most appropriate legal base**?

Verify that you have a comprehensive understanding of its « data life cycle », from the collection to the archiving and disposal.

If you are unsure, you can also try by dismiss the obviously inappropriate legal base.



Acknowledgements

This publication is supported by the French Development Agency (AFD) and the Crisis and Support Center of the French Ministry of Europe and Foreign Affairs (CDCS). Nevertheless, the ideas and opinions presented in this document do not necessarily represent those of AFD and CDCS.

This presentation was designed using resources from [Flaticon](#), [Freepik](#) and [The Noun Project](#).