The EDPS quick-guide to necessity and proportionality



Processing of personal data - be it collection, storage, use or disclosure - **constitutes a limitation** on the right to the protection of personal data and must comply with EU law. This requires ensuring that it is both **necessary and proportional**.

The **8 steps** outlined below will help you assess the compatibility of measures impacting the fundamental rights to privacy and to the protection of personal data with the **EU Charter of Fundamental Rights**.

They are based on the EDPS **Necessity Toolkit** and **Guidelines on Proportionality.**

Assessing **necessity**:

1 **Factual description** of the measure. ☑

2 **Identify fundamental rights and freedoms** limited by data processing. Is there a limitation of the rights to privacy and to the protection of personal data, and possibly also of other rights?
(*) In any case, the measure must respect the essence of the rights. ☐

3 **Define** the **objectives** of the measure. These may include an objective of general interest recognised by the Union or the need to protect the rights and freedoms of others. ☐

4 Choose **the option that is effective and least intrusive**. The measure should be genuinely effective and the least intrusive for the rights at stake. ☐

Assessing **proportionality**:

5 Assess the **importance** of the objective and **whether the measure meets the objective**. ☐

6 Assess the **scope, the extent and the intensity of the interference**. - SCOPE: how many persons would be affected? - EXTENT: what type of data would be processed? for how long? - INTENSITY: would the measure allow precise conclusions to be drawn about private lives of individuals? ☐

7 Proceed to the **'fair balance' evaluation** of the measure. ☐

8 If the measure is **not proportionate**, identify and introduce **safeguards** (such as: reduce the scope or extent of personal data processing; introduce a sunset clause or an expiry term; provide for specific oversight/governance arrangements, etc.). ☐



In case of questions, please contact the EDPS Policy and Consultation Unit:
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