

BRIEFING NOTE**Data Subject rights in Operational Personal Data Implementing rules****1. Introduction**

Provisions on DSRs under Chapter IX differ from the general provisions and do not require a separate MB decision translated in all official EU languages nor to be published in the OJUE.

Under Chapter IX, restriction of rights is not given by default. The restrictions need to be applied only when necessary, which requires an examination on a case by case basis.

Equally, all DP rights apply to OPD, but can be limited in specific circumstances. Frontex may directly collect data via its own staff, on other occasions personal data may be provided by a MS, Europol or Eurojust. In any of those cases, the principle of ownership of data should be also respected when dealing with DSRs. Additionally, it would not be possible for Frontex to know whether a restriction applies following the conditions set in article 79, 81 and 82 without consultation and coordination with other data providers.

Additionally, the DPR applies directly. Consequently, it is not necessary to apply any other conditions but to define the procedural aspects the Agency needs to follow when dealing with a DSR request. Therefore, there is only the need to have two articles; the first relate to the conditions to follow when a DSR is received. The second sets the procedural aspects in case restrictions need to be applied.

The marked parts in the articles are suggestion of options and/or explanation of why a provision is drafted as presented.

It is important to highlight that, considering the purpose of Article 90 (identification of data subjects and subsequent deletion once the identification is achieved) that data subject rights (and restrictions upon those) become irrelevant if there is no data being processed. Consequently, the article related to setting the baseline for identification is of the utmost importance not only for the operation on deletion but also on the considerations related to DSRs. Therefore, I would advise that the processing of data for the identification of suspects evolves around to aspects: a. identification of an individual and b. confirmation of the effective suspicion by a MSs.

In particular, as relates to b, the challenge would always be that the data held by FX would in most cases be incomplete. In case of partial hits when faced with a DSR, it would not be possible to ascertain that the person whose information Frontex is in possession relates to the person making the DSR request.

2. Specific provisions

Article Xx - Procedural aspects for the application of DSR

1. Individuals will be informed by FX on the processing of OPD via a privacy statement in a dedicated space in webpage.
2. The privacy statement will contain all provisions referred to in Article 79(1) and 79(2) of the EUI DPR.
3. Additionally, the dedicated space will contain this MB decision and any other policy or procedure referring to the exercise of DS rights.
4. All data subject requests shall be free of charge.
5. Frontex has the obligation to respond to all requests, except when found manifestly excessive and unfounded. FX will justify and document the reasons for rejection after consultation with the DPO (in case the rejection of the request is not done by the DPO- just as in the DPO IR, I strongly suggest to channel them through the DPO, which unlike COM statements on DPO rules, doesn't prevent DPO independence - the entire Europol DPO is responsible for handling all DSRs)
6. All requests shall be responded in written and its receipt shall be documented (by the DPO?)
7. Frontex shall store the data in a way that allows to establish which party gave the information or whether it was the result of a Frontex activity itself (*Important for an individual seeking redress - suggestion to move it to the article on review and deletion or on processing*)
8. FX shall ask for prove of identity to the requester (policy to be added into point 3 dedicated space). (OPTIONS: A) FX receives all requests directly together with an ID - policy to identify aspects without which the request cannot be accepted - e.g.: no blacking out of DoB but picture can be blackened out)
OPTION B: In case reasonable doubts in relation to the identity of the data subject persist, FX may request assistance from CA LE

Article xx- Procedural aspects for restrictions of DSR

1. Restrictions to data subject rights will be exercised on a case-by-case basis. They shall be documented and kept on a register available to the EDPS upon request.
2. Data subjects may address their requests directly to the EDPS when they are informed by Frontex that restrictions are applied.
3. Prior to responding Frontex shall coordinate and closely consult its response with MSs LE CA, Europol and Eurojust (when applicable) to ensure:
 - a. There is no obstruction of official or legal inquiries, investigations or procedures;
 - b. There is no prejudicing of the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
 - c. The protection of Member States public security;
 - d. The protection of the Member States national security;
 - e. The protection of the rights and freedoms of others, such as victims and witnesses.
4. On the cases referred to the provision above, Frontex shall document the data provider responses.