

# Federated Access Management

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## **Abstract**

The document provides an overview and recommendations on how to implement Federated Access Management Systems in order to reduce the amount of personally identifiable data that is exchanged, in accordance with the Directive *95/46/EC*.

The paper does not constitute legal advice and no responsibility of accepted for any errors. Readers should also note that individual member states may have different local transpositions of the Directive.

## **Federated Access Management**

Traditionally, staff and students in research and education have gained access to licensed on-line resources such as electronic journals and discussion groups by having a personal login with the provider of the service and providing additional data about themselves to the provider. Federated Access Management represents a different approach, where the person logs into their home organisation – typically a university, college or school – and that organisation then provides the service provider with the information the service needs to make its access control and presentation decisions. For the many resources that are covered by site licences, this may require no more than a reliable assertion that the person is a member of the organisation. For some services it may be necessary to assert the person's status (staff, student, etc.) or their subject of study; if the service allows its users to make individual configuration choices or to retain information such as recent searches then the home organisation can provide a unique opaque persistent identifier, unique to that service, rather than the user's actual identity to allow this information to be recorded. Only a few services, for example where a resource is licensed to particular individuals or where e-mail is used to send results or notices, should need to handle information directly linked to an individual person.

Federated Access Management therefore represents an opportunity to greatly reduce the amount of personally identifiable data that is exchanged, in accordance with the aims of Directive *95/46/EC* on the processing of personal data. That Directive sets rules both for when personal data may be processed, and the actions that must accompany the processing. This paper seeks to apply the Directive to the particular case of Federated Access Management to determine how both home organisations and service providers should act in order to comply with the Directive.

## Directive 95/46/EC on Personal Data

The Directive permits personal data about a data subject to be processed in two different types of circumstances:

- Where processing is **necessary**, either for the performance of a contract with the data subject (Article 7(b)), to comply with a legal requirement (Art.7(c)), to protect the vital interests of the data subject (Art.7(d)), in the public interest (Art.7(e)) or, with some limitations, for the legitimate interests of the data controller (Art.7(f));
- Where processing is optional, and the data subject has given **consent** (Art. 7(a)).

The Directive sets different requirements for processing in each of these circumstances. To comply with the Directive it is therefore necessary to know which circumstance is being used, and what duties that imposes. If neither circumstance applies, i.e. the processing is not necessary and the data subject has not consented, then personally identifiable data must not be processed.

The following sections consider the various transfers of data (possibly including personal data) that occur within a Federated Access Management system and seeks to identify the appropriate legal basis (if any) that applies to each of them. The appropriate conditions and requirements from the Directive are then used to derive recommendations for Home Organisations and Service Providers to improve their compliance with the Directive.

## Data Transfers in Federated Access Management

In a Federated Access Management system, information about a user will normally be provided by the user's home organisation to the service provider. However it is also possible for the service provider to ask the user to provide information directly, for example through a registration or configuration page. The Directive also distinguishes transfers of data to countries outside the European Economic Area (EEA), so it is necessary to consider what differences might apply if service providers are located outside Europe.

### *Transfer from Home Organisation to Service Provider*

In most educational contexts a contract will exist between the user and their home organisation (their school, college or university), or there will be a legal duty to provide education. The home organisation may therefore (by Art.7(b) or Art.7(c) of the Directive) use the basis of **necessity** to process personal data, including disclosing it to service providers, so long as the processing is necessary to fulfil the contract with the user or the legal duty.

This means that home organisations must ensure that they only release personal data to services related to the purpose(s) of the contract or duty (usually education and/or research), and do not disclose any more information to the service provider than is necessary for the delivery of the service (Art.6(1)(c)). Non-personal attributes or opaque identifiers should be used wherever possible and service providers should expect to have to make a strong case for any requirement to disclose information directly linked to an individual.

The home organisation must also (by Art.10) inform the user what personal data is being disclosed to service providers and (by Art.6(1)(b)) for what purposes. This information is commonly presented in the form of a Fair Processing Notice. There are at least three opportunities for this to be done: when personal data is collected from the user, when the user signs up for a particular service, and when the user accesses the service. Circumstances will determine which of these are appropriate: for example if the user is not able to understand the notice then information must be given to a responsible adult before the user accesses the service.

Finally, since the Directive recognises the right of a user to object to the processing of their personal data (Recital 25 and Art.14), the home organisation must have a clear policy and process for dealing with such objections. The process must include consideration of whether the processing is strictly necessary or whether an alternative exists, and must ensure that the correct balance has been achieved between the rights of the individual and the obligations of the organisation.

If it wishes, the home organisation may also process personal data on the basis of the user's **consent** (Art.7(a)). However this basis cannot be used for processing that is necessary for the user's education, since in that case the consent would not be freely given (as required by Art.2(h)). Consent should only be used, if at all, for services that are not necessary, or to provide optional information to services that are necessary. Furthermore a home organisation using consent must also keep individual records of which users have consented to the processing or release of which data to which services, and allow all users to withdraw or modify their consent at any time. To avoid this burden the home organisation may prefer to limit disclosure to non-personally identifiable information.

If personal data is to be exchanged, either on the basis of **necessity** or **consent**, the home organisation and service provider will normally enter into a data controller/data processor arrangement. If this is not done then the service provider must (by Art.11) provide the user with a Fair Processing Notice, no later than the user's first contact with the service, informing them of the provider's identity, the personal data received and the purpose(s) for which it will be used.

### ***Transfer from User to Service Provider***

For some services it may be appropriate for the service provider to ask the user to provide additional personal information, for example an e-mail address for sending notification of service updates. In the usual case, where there is no contract between the service provider and user, this processing can only take place on the basis of the user's **consent** (Art.7(a)).

Since consent must be free and informed (Art.2(h)), the Service Provider must ensure that users who refuse to provide personal information are not unreasonably disadvantaged. For example service update information, if offered, should also be available on a web page for users who do not wish to provide an e-mail address. Furthermore, the service provider must be able to deal with the user withdrawing their consent at any time. If personal data is essential for the provision of the service it should therefore be obtained from the home organisation as described above, since this is less likely to become unavailable and may also be more accurate than the user's self-declaration.

Where a service provider does obtain personal data from a user, the service provider will be the data controller for that data and carries the normal data controller responsibilities and liabilities, including informing the user what the data will be used for (Art.11), only collecting necessary data (Art.6(1)(c)), and only using the data for the declared purpose(s) (Art.6(1)(b)).

### ***Services outside European Economic Area***

In general, transfers of personal data to countries outside the European Economic Area (EEA) are prohibited unless the receiving country provides equivalent protection of personal data (Art.25).

If a service provider is not located in one of the countries that have been formally recognised as providing equivalent protection (a current list is available from the EC Data Protection home page) then personal data can only be disclosed under one of the derogations provided by Article 26. These recognise transfers based on both contractual necessity and free individual consent, so transfer by either of the means described in the sections above may be permitted in appropriate circumstances.

However the burden on a home organisation that transfers personal data to a service provider outside the EEA is heavier. Since it cannot be assumed that the service provider will automatically provide European levels of protection these are likely to have to be specified by contract terms. Model contract terms can be found on the EC Data Protection home page

([http://ec.europa.eu/justice\\_home/fsj/privacy/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm)).

## Summary of Recommendations

This section summarises the recommendations for home organisations and service providers when transferring information within a Federated Access Management system. Note that both will also have responsibilities under the Directive for personal information that they hold, but these apply no matter how the information was obtained.

### *Home Organisations*

- Must identify which services are necessary for education/research
  - Must consider whether personally identifiable information is necessary for those services, or whether anonymous identifiers or attributes are sufficient;
  - Must inform users what information will be released to which service providers, for what purpose(s).
  - May release that necessary personally identifiable information to those services;
- May seek users' informed, free consent to release personal data to other services that are not necessary for education/research
  - Must inform users what information will be released to which service providers, for what purpose(s);
  - Must maintain records of individuals who have consented;
  - Must allow consent to be withdrawn at any time;
  - May only release personal information where consent is currently in effect.
- Should have a data processor/data controller agreement with all service providers to whom personally identifiable data is released.
- Must ensure adequate protection of any data released to services outside the European Economic Area.

### *Service Providers*

- Must consider whether personally identifiable information is necessary for their service, or whether anonymous identifiers or attributes can be used;
  - Should obtain that information from home organisations;
  - Should have a data processor/data controller agreement with all home organisations from whom personally identifiable data is obtained;
  - If no such agreement is in place, must inform users what personal information will be obtained, by which service providers, for what purpose(s).
- May request personal information from users
  - Must inform users what information will be released to which service providers, for what purpose(s);
  - Must ensure that users who do not provide information are not unreasonably disadvantaged;
  - Must maintain records of individuals who have consented;
  - Must allow consent to be withdrawn at any time;
  - Must cease processing data when consent is withdrawn.