Law | GDPR:Balancing Decisions

BD.06 Necessity

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Last update: 2021-05-22 14:27:46 | By: Winfried Veil

Created at: 2021-05-12 21:51:14

30 GDPR provisions stipulate that the controller must carry out necessity assessments. This means that he must check whether his data processing is necessary for certain purposes:

> ***Art. 5 I c:*** *"Personal data shall be adequate, relevant and limited to what is* ***necessary*** *in relation to the purposes for which they are processed."*

> ***Art. 5 I d:*** *"Personal data shall be accurate and, where* ***necessary****, kept up to date."*

> ***Art. 6 I b: "****Processing shall be lawful if the processing is* ***necessary*** *for the performance of a contract […]."*

> ***Art. 6 I c: "****Processing shall be lawful if the processing is* ***necessary*** *for compliance with a legal obligation to which the controller is subject."*

> ***Art. 6 I d:*** *"Processing shall be lawful if the processing is* ***necessary*** *in order to protect the vital interests of the data subject or of another natural person."*

> ***Art. 6 I e: "****Processing shall be lawful if the processing is* ***necessary*** *for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller."*

> ***Art. 6 I f:*** *"Processing shall be lawful if the processing is* ***necessary*** *for the purposes of the legitimate interests pursued by the controller or by a third party […]."*

> ***Art. 7 IV: "****When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not* ***necessary*** *for the performance of that contract."*

Art. 9 II b: *Processing sensible data is not prohibited "if the processing is* ***necessary*** *[…] in the field of employment and social security and social protection law […]."*

Art. 9 II c: *Processing sensible data is not prohibited "if the processing is* ***necessary*** *to protect the vital interests of the data subject or of another natural person […]."*

Art. 9 II f: *Processing sensible data is not prohibited "if the processing is* ***necessary*** *for […] legal claims or whenever courts are acting in their judicial capacity."*

Art. 9 II g: *Processing sensible data is not prohibited "if the processing is* ***necessary*** *for reasons of substantial public interest […]."*

Art. 9 II h: *Processing sensible data is not prohibited "if the processing is* ***necessary*** *for the purposes […] medicine, for […] health or social care […];*

Art. 9 II i: *Processing sensible data is not prohibited "if the processing is* ***necessary*** *for reasons of public interest in the area of public health […]."*

Art. 9 II j: *Processing sensible data is not prohibited "if the processing is* ***necessary*** *for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes […]."*

Art. 11 I: *"If the purposes for which a controller processes personal data* ***do not or do no longer require*** *the identification of a data subject by the controller, the controller shall not be obliged […]."*

Art. 13 II: *"In addition to the information referred to in paragraph 1, the controller shall […] provide the data subject with the following further information* ***necessary*** *to ensure fair and transparent processing:"*

Art. 14 II: *"In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information* ***necessary*** *to ensure fair and transparent processing in respect of the data subject:"*

Art. 17 I a: *"The data subject shall have the right to […] erasure […] where […] the personal data are no longer* ***necessary*** *in relation to the purposes for which they were collected or otherwise processed."*

Art. 17 III: *"Paragraphs 1 and 2 [right to erasure] shall not apply to the extent that processing is* ***necessary*** *[…]."*

Art. 21 VI: *"Where personal data are processed for scientific or historical research purposes or statistical purposes […], the data subject […] shall have the right to object to processing […] unless the processing is* ***necessary*** *for the performance of a task carried out for reasons of public interest."*

Art. 22 II a: *"Paragraph 1 [prohibition of automated decision-making] shall not apply if the decision is* ***necessary*** *for entering into, or performance of, a contract […]."*

Art. 25 II 1: *"The controller shall implement […] measures for ensuring that, by default, only personal data which are* ***necessary*** *for each specific purpose of the processing are processed."*

Art. 34 III a: *"The communication to the data subject referred to in paragraph 1 shall* ***not be required*** *if […] the controller has implemented appropriate […] measures […]."*

Art. 49 I 1 b: *"In the absence of an adequacy decision […] or of appropriate safeguards […] a transfer […] of personal data to a third country or an international organisation shall take place only […] if the transfer is* ***necessary*** *for the performance of a contract […] or the implementation of pre-contractual measures takenath the data subject's request."*

Art. 49 I 1 c: *"In the absence of an adequacy decision […] or of appropriate safeguards […] a transfer […] of personal data to a third country or an international organisation shall take place only […] if the transfer is* ***necessary*** *for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person."*

Art. 49 I 1 d: *"In the absence of an adequacy decision […] or of appropriate safeguards […] a transfer […] of personal data to a third country or an international organisation shall take place only […] if the transfer is* ***necessary*** *for important reasons of public interest."*

Art. 49 I 1 e: *"In the absence of an adequacy decision […] or of appropriate safeguards […] a transfer […] of personal data to a third country or an international organisation shall take place only […] if the transfer is* ***necessary*** *for […] legal claims."*

Art. 49 I 1 f: *"In the absence of an adequacy decision […] or of appropriate safeguards […] a transfer […] of personal data to a third country or an international organisation shall take place only […] ifthe transfer is* ***necessary*** *in order to protect the vital interests of the data subject or of other persons […]."*

Art. 49 I 2: *"Where a transfer could not be based on a provision in Article 45 or 46 including […] a transfer to a third country or an international organisation may take place only if the transfer […] is* ***necessary*** *for the purposes of compelling legitimate interests pursued by the controller […]."*

The term "necessary" is also used in 47 Recitals: 8, 13, 17, 19, 29, 31, 38, 39, 43, 44, 45, 46, 47, 49, 50, 52, 53, 54, 60, 61, 62, 65, 68, 69, 71, 73, 86, 89, 93, 95, 97, 101, 111, 112, 115, 120, 126, 129, 141, 143, 152, 153, 154, 162, 164, 170 and 171 GDPR.