

## BD.06 Necessity

Authors: Winfried Veil

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 taken at 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 [...] if the 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.