

Comments to the draft of EDPB-Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR

I. Introduction

On 8th of October 2024, the draft of „*Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR*“ was submitted by the European Data Protection Board (EDPB) for public consultation. This document constitutes the contribution of dacuro GmbH to the process. The comments below refer to the paragraphs (further as “para.“ or „paras.“) of the draft.

II. Comments

- **Para. 8:** In paragraph 8 one can read as follows: *„It should also be highlighted that the second indent of Article 6(1) GDPR provides that the legal basis in Article 6(1)(f) shall not apply to processing carried out by public authorities in the performance of their tasks”*. Our suggestion would be that the scope of term “public authorities” shall be determined in these guidelines.
- **Para. 99:** In paragraph 99 one can read as follows regarding the data processing based on art. 6 (1)(f) GDPR by the public authorities: *“Nevertheless, these provisions do not prevent from relying, in exceptional and limited cases, on Article 6(1)(f) GDPR when the processing is not linked to or does not relate to the performance of their specific tasks or the exercise of their prerogatives as public authorities, but concerns, where permitted by the national legal system, other activities that are lawfully carried out. Relying on Article 6(1)(f) GDPR in such exceptional cases should be documented internally.”* Does that mean that art. 6 (1) (f) GDPR applies in case of public authorities, when they e.g. close service agreements with external private service providers (the processing of personal data of contact persons representing private service providers)? Our suggestion would be that the Board provides for examples.
- **Paras. 100 – 108:** According to paras. 100 – 109 data processing in connection with fraud prevention would fall under art. 6 sec. 1 (f) GDPR. However, an argument can be made that there is a legal obligation to prevent fraud. Therefore, the Board would be requested to draw the line between the cases of fraud prevention falling under the scope of art. 6 sec. 1 (f) GDPR and the ones falling under the scope of art. 6 sec. 1 (c) GDPR.¹
- **Paras. 109 - 112:** In connection with data processing for the purpose of “direct marketing” the Board highlights the fact that the local laws addressing direct marketing shall be observed. One of the examples would be the national unfair competition acts (e.g. in Germany: Gesetz gegen den unlauteren Wettbewerb - UWG).
- **Para. 123:** In para. 123 one can read as follows: *“According to Recital 48 GDPR, controllers that are part of a group of undertakings may have a legitimate interest in transmitting personal data within the group of undertakings for internal administrative purposes, including the processing of clients’ or employees’ personal data.”*. Our request would be that

¹ See also para. 50 of EDPB Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects (link: https://www.edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines-art_6-1-b-adopted_after_public_consultation_en.pdf)

the Board elaborates on the term “internal administrative purposes” and provides for further examples.

III. The missing subject matters to be addressed in the Guidelines.

- **The processing of personal data of a business partner’s contact person:** As already mentioned in our comments regarding para. 99, the guidelines shall address the issue of the processing of personal data of contact persons representing a legal person/ entity by a contract partner. In such a case the legal basis would be art. 6 sec. 1 (f) GDPR in connection with art. 6 sec. 1 (b) GDPR and not solely art. 6 sec. 1 (b) GDPR.
- **The processing of pictures of natural persons:** According to the German Data Protection Authorities the picture of a natural person can under the circumstances be processed on the basis of art. 6 sec. 1 (f) GDPR (persons to be seen in the background of a picture). Our request would that the Board elaborates on the subject matter regarding the processing of the image data of a natural person on the basis of art. 6 sec. 1 (f) GDPR.