

Comments

to the EDPB Guidelines 1/2024
on processing of personal data based on Article 6(1)(f) GDPR
version 1.0 adopted on 8 October 2024

submitted by
Stiftung Datenschutz

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Stiftung Datenschutz, the German Data Protection Foundation, would like to express its full appreciation for the presentation of the guidelines on legitimate interest and welcomes the opportunity to comment.

The guidelines are coherent and clearly explain the scope of application of Article 6(1)(f) GDPR.

Nevertheless, we would like to make a few comments in the following.

To part II
Elements to be taken into account when assessing
the applicability of Article 6(1)(f) GDPR as a legal basis

A. 1st step: Pursuit of a legitimate interest by the controller

Re para. 19

It would contribute to further clarity if it was already clarified in this recital that a legitimate interest of a public authority is generally excluded and that this also applies if the authority asserts legitimate interests as a third party.

B: 2nd step: Analysis of the necessity of the processing to pursue the legitimate interests

Re para. 29

When discussing the necessity of processing with regard to data minimisation, it should be noted that this must be taken into account not only at the data level, but also when selecting and configuring the technical systems and designing the processes. For the controller, the principle of data minimisation means that the system or process that requires the least data to achieve the desired purpose should be selected. The proposed requirement is important in view of the fact that data protection-friendly applications are to be particularly promoted.

C. 3rd step: Methodology for the balancing exercise

Re para. 40

The clarification that the processing of personal data that includes any sensitive data as defined in Article 9 falls under Article 9(2) is welcomed. This is to apply in particular where the data are collected in a bundled form without the possibility of separating sensitive data.

It could be clarified here that even if the data categories are subsequently separated, sensitive information can be obtained from non-sensitive information. Such information can, for example, result from the time of the survey, the survey group or other circumstances that exist in the context.

The clarification that erroneous data does not change the categorisation as sensitive is welcomed. However, with regard to the case law of the ECJ, it should be made clear in the first bullet point under recital 40 which decisions the statements refer to; a footnote would make this easier to understand.

Re para. 47

The consideration of the further effects of the processing is welcomed. In the context of an objective assessment of a processing operation, it should be considered that the more intensive a processing operation interferes with rights, the more specific the circumstances of that processing operation must be considered.

It is also emphasised that the assessment must consider that the interests of those affected can also diverge within a group. However, it remains unclear why this should be the case, particularly in the relationship between employer and employee. Either this relationship should be defined more precisely. Alternatively, a more illustrative example should be chosen, e.g. that the processing of personal data can have different effects on group members with different backgrounds.

Re para. 57

The purpose of the balancing test is to ensure that an appropriate balance is achieved between the rights, freedoms and interests of the controller and the data subjects. If this test leads to the conclusion that the rights of the data subject prevail, it is difficult to imagine that additional measures based on the rights of the data subject can compensate for this deficit. This applies in particular to the rights of the data subject mentioned in recital 57, e.g. the right to erasure.

The right to object or the right to data portability also depend on data subjects being properly informed about the processing. However, as the Guidelines correctly state, information about a surprising processing is precisely not sufficient to justify a legitimate interest. However, it remains unclear why measures to justify processing based on a legitimate interest should even be considered in the case of conflicting interests of the data subjects. It should either be made clear here that justification hardly seems possible, or a common example should be given of the individual cases in which it may be possible.

The aforementioned also applies to recital 62.

Re para. 68

The clarification that data subjects have a right to information about the balancing test is expressly welcomed. Further guidance on the scope of the information would be useful in this regard.

Part III

Relationship between Art. 6(1)(f) GDPR and Data Subjects Rights

The description of the reference to the rights of data subjects is very well done. The comments on specific areas of application are to be welcomed.

Transparency and information to be provided to the data subject

Re para. 68

The clarification that data subjects have a right to information about the balancing test is expressly welcomed. Further guidance on the scope of the information would be useful in this regard.

Right to rectification

Re para. 85

With regard to the right to rectification and the accuracy and completeness of the data, it should be considered - in particular in recital 85 - that the right to accuracy and completeness does not give rise to a right on the part of the controller to obtain additional or corrective information from the data subject. For example, it cannot be inferred from the right to rectification that the controller has a right to receive the correct information, e.g. about the kind of a recreational hobby, if incorrect data is processed. It should be made clear that the rights to erasure and rectification are complementary in this respect. This applies in particular in cases where the data subject is not entitled to erasure but the data is incorrect. Within the scope of the legal basis of legitimate interest, it is the sole responsibility of the controller to ensure the accuracy of a data.

Part IV.

Contextual application of Article 6(1)(f) GDPR

The description of the application of Article 6(1)(f) GDPR in relevant contexts from practice facilitates the understanding of the essential aspects of Article 6(1)(f) GDPR. Further examples would be helpful.