

Proposition

The guidance should recognize the insignificant, small impact data processing and soften the applicability requirement for the usage of legitimate interest for such cases.

Background

The GDPR text fails to recognize the small impact, small scale, insignificant data processings. The supervisor authorities do consider the processing impact during investigations, but they do not openly discuss the practical approach of these. Instead, they often dictate a strict and narrow interpretation of the GDPR, where all processing must be documented to the utmost extent.

This does not meet real life very well, we are facing a number of cases, where in strict terms data processing happens, but the significance of these processing is barely visible. Not recognizing these as exceptions jeopardizes the position of the GDPR in our society, people tend to interpret the regulation as a collection of impossible requirements and tend to neglect it.

Legitimate interest is highly involved in the insignificant processings. Especially in cases where consent is out of the question, for example in the employer-employee relation. In everyday life of a company, we see a number of small impact and mostly undocumented data processings which might be interpreted as very simple cases of legitimate interests. For example, providing parking space to employees (license plate number), assembling Christmas gift packages for the children of employees (children data), displaying the employer of the month, photoshoot of company celebrations for internal news.

The current text of the guidance and the lack of recognition of the insignificant data handlings might lead to an interpretation stating that all the above processing must have the full set of transparency and applicability documents to be justified as legitimate interests.

Suggestion

In Section I of Guidelines 1/2024, a paragraph should recognize the insignificant data handling and acknowledge that the legitimate interest applicability exercise might be omitted in such cases. This helps to establish the distinction of the different significance levels of processing, and at the same time, strengthens the fact that in other (not insignificant) cases, the documentation of the applicability is a must.

Text suggestion:

In certain cases, the Data Controller might recognize that the data processing in question is insignificant because the processing is occasion based, has limited scope and nearly no impact on the persons involved. In such cases the applicability test might be merely a formality instead of real evaluation and often represent unproportional efforts on the Controller side. If the Data Controller is utmost certain that the processing in question belongs to such an insignificant case of legitimate interest, the documented adequacy test might be omitted.

Proposition sent by

Tibor Kiss
Information security, data protection specialist
Zenit Solutions Kft - Hungary
tibor@zenit-services.com
+3670 618 0126

Thank you for considering!