

Dear all,

after I read through the Guidelines 07/2020 on the concepts of controller and processor in the GDPR, I have one very specific feedback. On page 36, 37 and 38 are stipulated the obligations of processor to assist the controller (no. 127-139). From practical point of view, it is very unclear whether the processor may charge money for the provision of such assistance.

It would be very helpful to determine whether the processor may charge money for the assistance and whether the processor may also demand more than just the necessary costs. It is usual that the provision about possibility of the processor to reimbursement of purposefully incurred costs are included in data processing agreement. However, in some cases the assistance may be that time-consuming, that the processor may want to charge additional fees for doing assistance.

In my point of view, this kind of provision is not forbidden by Article 28 GDPR and parties (controller and processor) may determine the content of the contract (it is up to their free will and GDPR should respect all fundamental rights such as freedom to conduct a business). On the other hand, it is legal duty of the processor to assist the controller in ensuring compliance with the obligations (e.g. pursuant to Article 32 to 36 or with exercising the data subject's rights) and the processor probably may not profit from fulfilling his legal duties.

It may be very helpful for controllers and processors to set up precise rules on how to charge fees for doing assistance and whether it is possible to make profit from such assistance. Clarification in this Guidelines 07/2020 may be very useful for a lot of controllers and processors.

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