I would consider the overall Guidelines 1/2024 helpful in summarising and reinstating the reasoning that should be adopted (including the factors that should be weighed in) when a data controller determines whether "legitimate interests" can be the appropriate lawful basis. Two pieces of comments:

Firstly, with respect to Examples 5 and 6 illustrating the "reasonable expectations of the data subjects", both examples suggest the impugned data processing activities go beyond the data subject's reasonable expectations. Would it be appropriate to give example(s) showing data processing activities that fall within the data subject's reasonable expectations? Positive examples can be equally helpful for the public to understand the principle.

Secondly, regarding Example 6 on page 18 with respect to reasonable expectations of data subjects. The example said to the effect that reasonable data subjects would not expect their personal data to be processed as such.

Would this case be a good example demonstrating the impugned data processing goes beyond the data subject's reasonable expectations? An argument appears to be that it is within the data subject's reasonable expectation given that the images of people's faces are taken from publicly available sources. Would the inherently open nature of the Internet and social media platforms impute the reasonable expectation to the data subjects such that they are deemed to know that their personal data may probably be processed by the public by any means (subject to other restrictions per applicable data protection laws, as well as safeguards that may be implemented by the data controller)?

In any case, if the example is considered illustrative by the Guidelines, what kind of principles or factors do the Guidelines hope the public to take away? Is it trying to say data subjects still have strong privacy expectations on their personal data on publicly available platforms (this does not seem to be convincing in the context)?

Once again, if as the current Example 6 shows, personal data from publicly available sources still carry strong privacy expectations, I would expect the Guidelines to share an illustrative example where the data subject is deemed to have reasonable expectations that their personal data may be processed in a way that is not specifically mentioned to them.

I humbly hope the Guidelines can consider the merit of Example 6 and also make the key take-aways on the part of the public more clear, for the sake of guidelines.

***

Chengxi Feng

14 October 2024