

Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR

The Austrian Federal Economic Chamber provides the following comments:

Generally, more examples would be helpful.

To individual Points:

Para. 26: Paragraph 14 explains the difference between ‘interest’ and ‘purpose’. Art 6(4) refers to “purpose”. Hence, here in para 26 these two concepts seem to be mixed up.

Para. 53: The following statement is criticized: “..the mere fulfilment of ... Art 13, 14 [obligations] ... is not sufficient in itself to consider that the data subjects can reasonably expect a given processing.”

The very purpose of the obligations under Articles 13 and 14 is to inform the data subjects about the data processing activities of the controller. If a legitimate interest is clearly and understandably stated, and the data subject has received the information, then it must meet their "reasonable expectations" that this processing will take place. Otherwise, the information obligation under Articles 13 and 14 is rendered absurd.

Para. 54: Is the term ‘public figure’ to be understood in the sense of the EHRC decisions or the ECJ judgement in the Google cases etc. (‘role of the data subject in public life’)?

Para. 71: The law is pretty clear that the data subject bears the burden of proof regarding his or her particular situation. If the opposite is claimed, there is a lack of argument. This is of particular importance insofar as otherwise a ‘simple objection’ would at least temporarily prevent data processing that is permitted in principle. It must therefore be possible to impose higher requirements on the data subject's objection.

The guidelines treat the possible particular situation of the data subject extremely summarily and generously, but the topic of when there are no compelling legitimate grounds of the controller is dealt with in particular detail.

Para. 73: Further details should be provided with specific examples of when ‘compelling legitimate grounds’ exist.

Para. 106: The statement that the reference to "combating fraud" is not sufficient because it is too generic is also to be criticized. Any more detailed description of an anti-fraud measure is counterproductive, as it gives potential fraudsters clues on how to circumvent the measure.

Kind regards,

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