

On the concept of control stemming from legal provisions (*implicit legal competence*).

The approach on the concept of control stemming from legal provisions presented in *The Guidelines 07/2020 on the concepts of controller and processor in the GDPR* (v. 1.0, „The Guidelines”) seems inconsistent with (quite unambiguous) definition of a controller (Article 4[7] GDPR).

According to Art. 4 (7) GDPR (*a contrario*), if an entity *does not* determine the purposes and means of processing personal data (1), the law *does not* determine the entity as a controller (2), and specific criteria for controller nomination *are not* provided for by Union or Member State law (3) – there is no controller (even if personal data *is being* processed by the entity). Criteria no 2 and no 3 relate to legal competence.

There are no other criteria enabling to establish a controller based on Art. 4(7) GDPR.

However, The Guidelines introduces criteria no 4 (*implicit legal competence*): an entity may become a controller *if it fulfills public tasks* (i.e. is designated by law for realization of public purpose) *which cannot be fulfilled without collecting personal data* (22).

This seems to go beyond Art. 4 (7) GDPR – in such case an entity may become a controller even if it *does not* determine the purposes or means of processing personal data, the law *does not* determine the entity as a controller, and specific criteria for controller nomination *are not* provided for by Union or Member State law.

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