

Feedback on:
Guidelines 1/2024 on the processing of personal data based on Article 6 (1)(f) of GDPR
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Public Consultation Reference: 10/2024.

| Nr. | What Section of the Guidance is concerned ? | Concerns raised |
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| 1. | Introduction, Point 8., Section IV.2. | <p>Relying of public authorities on Art.6 (1)(f)</p> <p>Recital 47 reads as follows: "Given that it is for the legislator to provide by law for the legal basis for public authorities to process personal data, that legal basis should not apply to the processing by public authorities in the performance of their tasks."</p> <p>The proposed guidance points out that "reliance of public authorities on Art.6 (1)(f) is not ruled out in exceptional cases" without specifying any of them. This silence is disturbing because case law is conflicting. Some SA decisions put forth that Art. 6. (1)(e) merges all legal grounds for public authorities both in public and private legal relations. Other decisions draw a distinction between core public functions and ancillary functions like the operation of electronic monitoring systems (internal surveillance) or property access control measures not to mention the hiring of interns. The evolving stance of SAs on this issue causes uncertain application of law.</p> |
| 2. | Section II., Point 12. | <p>Documentation of legitimate interest</p> <p>Legitimate interest shall be documented based on Art.5(2). Case law (member states) is conflicting on whether Art.5(2) requires documentation or proof. Data controllers may be able to prove the existence of legitimate interest without written</p> |

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| | | documentation and there is case law supporting it. |
| 3. | Section III., Point 68. | <p>Data subjects shall be informed that they can obtain information on the balancing test upon request.</p> <p>This proposition raises various questions. First, should all data protection notices be updated with this information ? Second, is the data subject entitled to the whole balancing test or just the summary of it (see wp29.6/2014.).</p> |
| 4. | Section II, Point 23. | <p>Disclosure of Data for Purposes of Transparency and Accountability</p> <p>The guidance set forth that "Disclosure of salaries may rely on Art.6(1)(f)." What circumstances would justify that ? The reasoning is not entirely clear and needs to be supplemented. May for instance the principle of equal pay for equal work authorize employers to share salary information of individual employees ?</p> |
| 5. | Section II, Point 26. | <p>Compatibility Assessment: separate legal ground</p> <p>Would Art.6.(4) require separate legal ground ? The Regulation fails to set forth such a requirement and some SAs also took this stance. The SA for Badenwürttemberg issued a guidance on the use of artificial intelligence. Under Section V. Point 5. it reads: According to a controversial view further legal basis is also required for processing under Art.6.(4).</p> |
| 6. | Section IV. Contextual Application: Journalism is missing | <p>"A free media is at the heart of any healthy democracy – keeping us informed, encouraging debate and opinion, and entertaining us. It is a crucial part of the fundamental right to freedom of expression and information.</p> <p>A free media is also often called the public's watchdog because of</p> |

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| | | <p>its role in uncovering wrongdoing and holding the powerful to account."</p> <p>Information Commissioner's Office</p> <p>It is very surprising that EDPB fails to provide any guidance on this field despite the fact that Art.6(1)(f) plays a crucial role regarding journalism.</p> |
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