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edpb

European Data Protection Board

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May 17, 2019

Reply to public consultation - Guidelines 2/2019

Dear Sir or Madam,

We are very grateful for this opportunity to participate in the public consultation on the “Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) in the context of the provision of online services to data subjects”. Please allow us to briefly introduce the ADM to you:

The **ADM Arbeitskreis Deutscher Markt- und Sozialforschungsinstitute e.V.** represents the private-sector market and social research agencies in Germany. It was established in 1955 and is the only trade association of its kind. At the time of writing, 72 agencies are members of the ADM, together accounting for some 83 percent of turnover on the German market for market, opinion and social research (2.45bn € in 2017). According to its statutes, the duties of the ADM include preserving and promoting the scientific nature of market and social research, ensuring the anonymity of individuals participating in scientific research studies, and developing codes of professional conduct and canons of professional ethics.

A. Possibilities and limits of Article 6(1)(b) GDPR as the legal basis for processing personal data

The ADM welcomes and supports the position of the European Data Protection Board as described and explained in the “Guidelines 2/2019” concerning the limited possibilities and strict limits of the criterion of the “performance of a contract” in accordance with Article 6(1)(b) GDPR as the lawful basis for the processing of personal data. As explained in the “Guidelines 2/2019”, the corresponding assessment of the necessity of processing personal data in this connection depends not only on the contents of the underlying contractual agreement, but also on making a judgment as to whether the processing of personal data is necessary in order to fulfil a contract taking into account the principles of the data protection laws.

Like the European Data Protection Board, the ADM too criticises any attempt to circumvent the consent given by the data subjects to the processing of their personal data as the lawful basis of such processing, and to include data processing that is not immediately connected to the provision of requested information and services or the delivery of ordered goods within the corresponding contractual agreement.

The “Guidelines 2/2019” describe a series of examples of the processing of personal data in which the fulfilment of a contract under Article 6(1)(b) GDPR serves as the legal basis, or in which a different legal basis is required. It is not least these examples that give the “Guidelines 2/2019” such immediate practical relevance.

Even though in the meantime a considerable proportion of the processing of personal data takes place in a digital form, and this proportion is likely to increase in the future, it must not be forgotten that a series of procedures for processing personal data are still carried out in analogue form. The “Guidelines 2/2019” lack a note pointing out the fact that the strict conditions that are described and justified therein for the permissibility of using Article 6(1)(b) GDPR as the legal basis for the processing of personal data, apply equally for the digital and for the analogue world of data protection.

B. Article 6(1)(b) GDPR as the lawful basis for the processing of personal data in market, opinion and social research

The personal data of participants in a scientific survey carried out in market, opinion and social research is as a rule processed on the legal basis of the consent given by the data subjects in accordance with Article 6(1)(a) GDPR. This is true in particular of the actual collection of the research data using various forms of survey – i.e. via face-to-face, paper-and-pencil, telephone or online interviews – or using various different observation methods. Apart for the consent of the participants of a scientific survey, weighing up the legitimate interests in accordance with Article 6(1)(f) GDPR is also relevant to the practice of market, opinion and social research. This is true in particular of drawing samples, collecting data on the household context and of so-called passive research methods, where for methodological or practical reasons it is not possible to obtain consent.

In market, opinion and social research, the processing of personal data on the legal basis of Article 6(1)(b) GDPR is restricted to the management of so-called access panels. Access panels are databases containing individuals who have been recruited for future scientific surveys and who have consented to take part in scientific surveys. The individual members of the panel are incentivised each time they take part, to compensate them for the time spent repeatedly participating in scientific surveys for market, opinion and social research.

The nature and process of such incentivisation is governed by a contract which the research agency operating the panel concludes with the panel members. The contractual agreement solely governs the modalities of the incentivisation of the panel members and the panel management. The storage of personal data on the individual panel members is restricted to such data that is necessary for the fulfilment of the contractual obligations of the panel operator and panel members in connection with the incentivisation and panel management. On the other hand, the participation of the panel members in a concrete scientific survey and the collection of their personal data for this purpose cannot occur on the legal basis of the performance of a contract under Article 6(1)(b) GDPR, but requires the corresponding consent under Article 6(1)(a) GDPR.

C. Conclusions

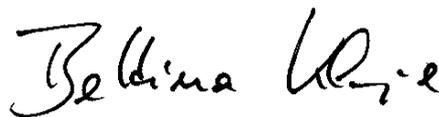
The ADM shares and supports the position of the European Data Protection Board expressed in the “Guidelines 2/2019” whereby the performance of a contract under Article 6(1)(b) GDPR can only serve as a lawful basis for processing personal data that is directly connected with the contractual aspects of providing the requested information or services, or the delivery of ordered goods. In market, opinion and social research, Article 6(1)(b) GDPR only plays a role as a lawful basis for the processing of personal data for research purposes in the context of so-called access panels, and here solely for the incentivisation of panel members and for the management of the panel by its operator. As a rule, the consent of the participants to take part in a scientific survey under Article 6(1)(a) GDPR and the weighing up of legitimate interests in accordance with Article 6(1)(f) GDPR provide the legal basis for the processing of personal data for scientific research purposes.

Finally, we would like to once again express our gratitude for being given this opportunity to comment on the “Guidelines 2/2019”. If you have any questions or require further information, we will of course be happy to assist you.

Kind regards



Bernd Wachter
Chairman



Bettina Klumpe
Managing Director