

## Mock Exam

We are dealing with a case of direct marketing purposes and, as quoted by article 6 of the GDPR (*lawfulness of processing*), this is the case in which the processing is necessary for the purposes of the legitimate interest (*letter f*). This paragraph states that processing shall be lawful *for the purpose of the legitimate interest pursued by the controller or by a third party except where such interests are overridden by the interests of fundamental rights and freedoms of the data subject*. This means that data processing is allowed without consent when it is done for direct marketing purposes that is a legitimate interest pursued by the seller.

It is legitimate, but the data subject has the right to stop this processing.

First, data subject can exercise the **right of access** (*art 15* of the GDPR). In this way he can ask more information about the processing of his personal data. For examples he can obtain information about the processing purposes, the categories of data concerned, the recipients and eventually the recipients to whom data are disclosed, the existence of the right to erase personal data and to lodge a complaint.

The second right that data subject can exercise is the **right to object** (*art 21* of the GDPR). Using this right, data subject can object the processing and the controllers are specifically required to provide for this right in all cases where processing is based on the following two conditions of *article 6* of the GDPR:

- Condition for the providing of a public service.
- Condition based on legitimate interest of data controller.

In this case, we are dealing with the second condition and the article refers specifically to the processing of personal data for direct marketing purposes and referring to this processing, the article grants an unconditional right. Data controllers cannot prove any legitimate interest and there is not need for any balancing of interest and the controller must respect the individual wishes without questioning the reason of the objection. So direct marketing is legitimate, but data subject can ask to stop the processing without motivating their request and the controller must stop the processing.

After exercising the right to object, the data subject can also exercise the **right to erasure** (*art 17* of the GDPR). Data subject can obtain the cancellation of his personal data from the controller's database without any delay because it exists a legal obligation to cancel data.

Whether after having exercised these rights the companies continue in sending advertisement, then data subject can start complaining with two entities:

- The **DPO** (data protection officer), a role that is defined in *article 37* of the GDPR. She is an important role that must easily accessible and available to receive complaint about privacy (that could come from data subject but also from inner member of the company). One of the tasks of the DPO is to report the complaint to the member of the company and try to solve the problem. The contacts and details of the DPO is one of the compulsory elements that a controller must provide to data subjects, as required by *article 13* and *article 14*.
- **Supervisory authority:** it is a role defined in *article 51* of the GDPR. It is an independent and national supervisory authority that is the first contact point for data subject in case of data breach. In the *Article 57* of the GDPR are reported the tasks of the supervisory authority and we can find that "*they handle complaints lodged by a data subject*". So it is a task of supervisory authority to help data subject in case of infringement. In order to fulfil its tasks, as defined in *Article 58*, supervisory authority has different powers (power of injunction, investigative power, power of notification, ...) and can exercise corrective power in order to restore and protect the right of data subject. The corrective powers are *power of warning, reprimands, order to comply with the data subject request, power to rectification or erasure of personal data, limitation of the processing, withdraw certification and impose administrative fine*. In the case of Rob, supervisory authority can intervene ordering the companies to stop with advertisement, complying with the request of the data subject.