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Consent of employees (applicants) as the basis for processing the personal data in the absence of an equivalent position of the parties

Zgoda jako podstawa przetwarzania danych osobowych pracowników i kandydatów do pracy[1]

Abstract
The main purpose of the paper is to present the risks associated with the use of consent as a basis for the processing of personal data of an employee (applicant) in the context of the asymmetrical relationship between the parties to an employment relationship, also from the perspective of possible consequences for the employee. The paper indicates that the absence of a definition of consent in the Labour Code as well as an explicit indication that it can be used exceptionally as a basis for the processing of personal means that these provisions do not perform the protective function of labour law.

Keywords
employee consent, personal data, personal data processing, party imbalance

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Streszczenie
Głównym celem opracowania jest przedstawienie zagrożeń związanych ze stosowaniem zgody jako podstawy przetwarzania danych osobowych pracownika (kandydata) w przypadku niesymetrycznej relacji pomiędzy stronami stosunku pracy, także z perspektywy ewentualnych skutków dla podmiotu zatrudnionego. W artykule zwrócono uwagę na to, że brak definicji zgody w kodeksie pracy jak i brak wskazania wprost, że można ją stosować wyjątkowo jako podstawę przetwarzania danych osobowych powoduje, że przepisy te nie realizują w praktyce funkcji ochronnej prawa pracy.

Słowa kluczowe
zgoda pracownika, dane osobowe, przetwarzanie danych osobowych, brak równowagi stron

Introduction

The social and economic circumstances in which labor is performed have a significant impact on the content of employment relationships and their implementation. Considering the speed of technological, economic and social changes taking place in the modern world, the legislator strives to reconcile the need for flexibility with protection of the employee as the weaker party to the employment relationship. This is done by means of various instruments, including consents granted to each other by the parties to the employment relationship. It should be stressed, however, that while the legislator repeatedly allows the possibility of consent being granted by various entities, the Labor Code lacks

a definition of "consent" itself. It is also not included in the provisions of the Civil Code (Act of April 23, 1964, Journal of Laws of 2022, item 1360, hereinafter referred to as the Civil Code), which, pursuant to Article 300 of the Labor Code (Act of June 26, 1974, Journal of Laws of 2022, item 1510, hereinafter referred to as the Labor Code), are applicable to matters not regulated by the employment relationship.

Labor law also does not contain the structural elements of consent, which include, for example, an indication of the value that consent is supposed to realise. The value legally protected in labour law is the employee's (candidate's) right to privacy. The right to privacy is also one of the fundamental aspects of personal data protection. Art. 221a of the Labor Code, regarding the processing of personal data of employees and job applicants[2], is a provision that can serve as a good example for the analysis of consent as an activity performed by an employee. This regulation can serve as the starting point for a broader analysis of consent, exploring not only Polish literature and jurisprudence, but also the definition of consent contained in the European law on the protection of personal data and the actions of EU institutions. The aim of the study is to draw attention to the understanding of the very concept of consent in European regulations on the protection of personal data and the limitations that result from the use of consent due to the asymmetric nature of the relationship between the parties to an employment relationship. There will also be discussion of the conditions whose fulfillment gives grounds to assume that personal data which has not been explicitly enumerated in Art. 221 of the Labor Code and is to be shared by an employee (job applicant) is obtained on the basis of voluntarily given consent, the purpose of which was not solely to circumvent the provisions of Art. 221 of the Labor Code.

The notion of consent in the provisions of GDPR

The protection of natural persons with regard to the processing of their personal data is undoubtedly a fundamental right. This is confirmed in both national regulations (Article 47 and Article 51 of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483) and EU regulations (Article 8(1) of the Charter EU OJ of 2016, C 202, p. 389, Article 16(1) of the Treaty on the Functioning of the European Union, OJ C of 2016, No. 326, p. 47.). The protection of personal data is regulated in detail by the provisions of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/ EC, hereinafter referred to as the General Data Protection Regulation, Regulation 2016/679, or GDPR, Official Journal EU L 119 of 04/05/2016, p. 1, as amended). With regard to the processing of employees' personal data in connection with employment, the EU legislator has allowed Member States to adopt more detailed regulations in their national legislation or in collective agreements to ensure the protection of rights and freedoms. This applies to regulations regarding the processing of employee data for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship (Article 88(1) GDPR). The regulations further indicate that the provisions adopted by the Member States must include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the workplace (Article 88(2) GDPR). The effects of adapting Polish law to EU regulations on the protection of personal data included measures such as amendments to the Labor Code (Article 4 point 1 of the Act of February 21, 2019 amending certain acts in connection with ensuring the application of Regulation (EU) 2016 of the European Parliament and of the Council /679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (general regulation on data protection) and introducing Article 221a § 1 of the Labor Code pursuant to which the consent of the applicant or the employee may constitute the basis for the employer to process personal data other than that listed in Article 221 § 1 and 3 of the Labor Code, with the exception of personal data referred to in Article 10 of Regulation 2016/679. It is assumed in the literature that, due to the wording of Article 9 of the Labor Code, imposing an obligation on an employee to disclose personal data should result from statutory provisions and regulations issued on their basis, and the so-called autonomous sources of labor law can only repeat these sources (Barański, Giermak, 2017, p. 90). As already mentioned in the introduction, neither the provisions of Article 221a § 1 nor other provisions of the Labor Code define what consent is, nor do they indicate that it can only be used in specific cases. Therefore, it can be

assumed that the implementation of the provisions of GDPR was not correct, as the employee (applicant) cannot be expected to make a complex interpretation of the provisions of GDPR, in particular to look for the definition of consent. Such a definition with regard to the protection of personal data is contained in Art. 4 point 11 GDPR, and the provisions of the regulation are directly effective, inter alia, in relation to those regulations that have no equivalents in national law at all (Jaśkowski, 2022). According to this provision, the "consent" of the data subject means any freely given, specific, informed, and unambiguous indication of the will by which the data subject, in the form of a statement or a clear affirmative action, consents to the processing of personal data concerning them. As can be seen from the above, the term "consent" was introduced by the EU legislator by indicating specific and at the same time necessary conditions that should be fulfilled by behavior that constitutes consent. Only their fulfillment allows for the assumption that we are dealing with consent by means of which an employee (applicant), who has exclusive access to their personal data, allows the employer to interfere in the sphere of this exclusivity.

An employee's behavior can be deemed consent when it is voluntary. Consent is freely given if the person giving it has a free choice and the right to refuse or withdraw consent without being disadvantaged. The essence of the principle of voluntary consent is freedom from various forms of pressure on the part of the employer aimed at forcing consent from the employee (in general or with specific content). The attribute of "voluntariness" implies the real possibility of choice and control by the persons whose personal data are concerned (Dörre-Kolasa, 2020). In other words, the voluntary consent of the employee activates the employer's obligation to refrain from any actions (including any elements of inappropriate pressure or inappropriate influence on the person) that violate the employee's (job applicant's) freedom to choose to grant consent. This means that voluntariness occurs when an applicant or employee has a real choice, does not feel compelled to agree, and is guaranteed that accepting or rejecting the proposed conditions will not result in negative consequences (Nałęcz, 2021, p. 55). Consent is considered not to have been given voluntarily when, for example, (the employer) requires consent to the processing of unnecessary personal data as a precondition for the performance of an employment contract[3]. The voluntary consent of the job applicant is not eliminated by the application procedure for obtaining personal data (employer's application). The voluntary nature of consent is also subject to verification through the assessment of the purposefulness and adequacy of the processing of such data, which are by their nature objective, but which should be presented clearly to the applicant for employment. When assessing whether consent has been given freely, Art. 7 sec. 4 GDPR[4] comes into play. In principle, GDPR states that if the data subject has no real choice, that is, they feel compelled to consent, or will suffer negative consequences if they do not consent, that consent will be invalid[5].

In addition to the fact that consent is to be given freely, it should also be informed. This means, firstly, that it can only be given by a person capable of expressing it, i.e. aware of the surrounding reality, circumstances affecting consent, as well as general consequences that may be associated with it (Szczucki, 2012, p. 153). Therefore, in principle, an employee (job applicant) who may formally express consent is a person aged 18 or over. Under specific conditions set out in section nine, a person who has not turned 18 may also express their consent. At the same time, a person with limited legal capacity may, however, without the consent of their statutory representative, establish an employment relationship and perform legal actions that relate to this relationship, and thus also, for example, give consent to the processing of personal data related to employment.

The premise of informed consent assumes that the person giving it is informed (should know at least the identity of the data administrator and the intended purposes of the processing of their personal data[6]) and should be aware of the consequences of their actions. It seems that a useful instrument to help obtain the necessary knowledge regarding the given consent could be the possibility to consult an independent lawyer or a data protection supervisor who has specialised knowledge. Therefore, an important aspect becomes the knowledge of the person whose data is concerned, in terms of matters in which consent is required from the perspective of an existing employment relationship, as well as an awareness of the legal consequences of granting or not granting consent, including the possibility of withdrawing it. (Górnicz-Mulcahy, Lewandowicz-Machnikowska, Grzyb, 2022, pp. 15–22). It is assumed that, in accordance with the principle of transparency (which also fulfils the protective function of labor law), the information provided to the data subject should be formulated in an understandable manner, in clear and plain language. Accessibility of this content is also important – the clauses should be transparent and comprehensive. Enabling informed decisions, including understanding what consent is being given for, depends on the fulfillment of the employer's (administrator's) obligation to provide information to data subjects prior to obtaining their consent. The consequence of failure to meet the requirements for informed consent will be the invalidity of the consent and the possibility of the employer (administrator) committing a violation of Art. 6 GDPR.

The issue of informed consent is closely related to the fact that the consent should be specific, and

therefore should relate to the indicated purposes and the related legal grounds for the processing of the employee's (job applicant's) data. Only this allows the individual concerned to take a decision on granting consent, taking into account the assessment of various circumstances, prerequisites, and conditions that affect their employment situation. Therefore, when asking for consent to processing for many different purposes, employers should provide the possibility of expressing consent separately for each of the indicated purposes, so that the data subject gives specific consent for a specific purpose (Dörre-Kolasa, 2020). At the same time, the employer is obliged to inform the employee (job applicant) about these purposes of obtaining the data in a clear, legible, and easily accessible way.

The data administrator in the discussed case of the employer is also responsible for demonstrating that the data subject has consented to the processing of their personal data by an affirmative action (by unequivocal, confirming actions) (Judgement of the CJEU of November 11, 2020, C-61/19). Consent must be expressed in an unambiguous way, which is considered to be the case in two situations. Firstly, when it is in the form of a declaration of intent; and secondly, when it is implicitly expressed by a clear affirmative action. Consent expressed by an explicit affirmative action may only be used for ordinary personal data. In the case of processing special categories of personal data, so-called sensitive data, the legal basis can only be consent expressed by an appropriate declaration of intent, and not, for example, in the form of a confirmatory action.

Doubts as to the admissibility of using consent as an instrument for shaping the relationship between the parties to the employment relationship due to the lack of balance between the parties

The specificity of the relationship that binds the parties to the employment relationship impacts the assessment of the admissibility of the employee's consent to the employer's encroachment on their rights, in particular to the processing of the employee's personal data. As a rule, we assume that the exchange of consideration is most often carried out on the terms set out in the contract, the detailed terms of which should be negotiated jointly by the parties. The basic principles of negotiations are the principles of symmetry and nondominance, which means that each of the participants in the negotiation process should have the same rights and be subject to the same restrictions, and moreover – in accordance with the principle of nondominance – none of the parties may dominate, and therefore cannot assign himself or herself, for example, the role of an arbitrator (Kubot, 1978). In the case of a contract, we assume that equal parties arrange their relationship by specifying the conditions for a fair exchange of equivalent benefits on the basis of freedom of contract. Whether the above-mentioned principles are manifested in the case of negotiations conducted by the parties to the employment relationship is determined by many factual circumstances, which means that an assessment of the actions performed by the employee should be carried out each time, taking into account the circumstances of the particular case. When making the assessment, it should be taken into account, inter alia, that employees – from the point of view of their legal position – do not constitute a homogeneous group. They include both people performing jobs that do not require qualifications and people with qualifications, commonly present on the labor market at a given moment, i.e. easily replaceable people, as well as specialists who have unique knowledge and rare skills. This, in turn, means that, on the one hand, they are difficult to replace; and on the other hand, it is easier for them to find a job. In addition, when discussing the issue of imbalance between the parties, one should also take into account whether it is a negotiation stage during which the parties are just negotiating the terms of a future contract, or whether it is about the employer's action towards an employee who is already performing the contract. At each of these stages, unfavorable conditions on the part of the employee (e.g. economic conditions) may prevent the employee (job applicant) from refusing to consent to the employer's unfavorable actions. The actual position of a specific individual, both during negotiations and during the performance of the contract, depends, among other things, on whether they have the opportunity to quickly take up employment with another employer, how long they can potentially look for another job, and whether and how long they can stay unemployed. In other words, whether they has a source of savings or entitlement to social benefits sufficient to support themselves. If we determine that due to, for example, the above-mentioned factual circumstances, a particular applicant operates under conditions of economic coercion, then the relationship lacks balance, and thus conditions for fair negotiations are absent. An applicant in a difficult economic situation, even if the conditions offered are not suitable, usually decides to conclude a contract and gives consent to actions by the employer that are actually unfavorable at the moment. Considering the above, when the parties are formally equal but are in fact are unequal, it is necessary to employ measures making it possible to equalize the position of the parties, because formal equality and autonomy of will are insufficient for the parties to be able to shape their own legal situation by their actions. Therefore, the state enters into the relationship between the parties to the employment relationship. Initially, the state interfered in issues of protecting the life and health of

employees, but over time, both the subjective and objective scope of legal regulations expanded. Thus, labor law, as part of its protective function, also implements a compensatory aspect consisting in reducing the disproportions, resulting from the market positions of the employee and the employer, which are reflected in the content of the employment relationship (Skąpski, 2006).It is worth noting that trade unions also played a significant role in the process of shaping the standards enshrined in legal regulations. However, their importance is presently diminishing due to labor market transformations and the loosening of social bonds in the workplace. At the same time, however, the role of the state is growing. If the state is aware of its role, it can try to equalize the position of the weaker party of the employment relationship in many ways, e.g. by introducing minimum wage rates, imposing information obligations on the employer, regulating important issues by means of mandatory regulations, development of education tailored to the needs of the labor market, ensuring a high level of job placement services, providing social security for the unemployed, or by introducing a guaranteed basic income.

In conclusion, it can be pointed out that the state creates a legal framework for negotiations in the case of employment contracts, introducing mandatory norms that cannot be repealed or changed by contract, or semi-imperative norms that can only be changed in favor of the employee; the state may also impose legal restrictions on other actions and activities that the employee may authorize the employer to perform, thereby indicating what can and cannot be done, regardless of the employee's consent.

Referring the above to the issue of personal data protection of employees, it should be noted that recital 43 GDPR indicates that consent should not be a valid legal basis for the processing of personal data in a situation where there is a clear imbalance between the data subject and the administrator, because consent is unlikely to be freely given in this particular situation. This is, among others, the case of relations between the parties to an employment relationship. Despite this, consent was allowed as the basis for the processing of personal data of employees and job applicants. Indeed, as stated in recital 155: "Member State law or collective agreements, including 'works agreements', may provide for specific rules on the processing of employees' personal data in the employment context, in particular for the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee, the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship." The adoption of such a solution was not without dispute: the original version of the GDPR as presented by the European Commission contained a proposal to exclude consent as an important basis for the processing of employee data by the employer in the context of employment, due to the imbalance between the parties to the employment relationship (Barta, Kawecki, Litwiński, 2021, p. 138). However, the position accepted also in Polish literature prevailed that it would be too far-reaching to assume that due to the dependence inherent in the structure of the employment relationship, the employee/job applicant is never able to voluntarily give consent (Kuba, 2020, p. 233). Accepting the above position as accurate, it should be emphasized that, due to the potential abuse of the dominant position by the employer as the administrator, consent as the basis for the processing of personal data of employees and job applicants should be used exceptionally (Dörre-Kolasa, 2021, p. 873). Therefore, the employer should take into account that, in case of doubt, it will have to be proven, based on the circumstances of a particular case, that the employee in fact voluntarily consented to the processing of personal data. In addition, the scope of data requested by the employer from a job applicant or employee is limited, as it is subject to the principles expressed in Art. 5 GDPR.

Consent as the basis for the processing of personal data of employees and job applicants in the Labor Code

Consent may be the basis for the processing of personal data of an employee and a job applicant to jobs other than those listed directly in Art. 221 § 1 and § 3 of the Labor Code and which are defined in more detail in Article 221 § 4 of the Labor Code, except for personal data relating to criminal convictions and offenses or related security measures. According to Art. 221 § 1 and § 3 of the Labor Code the employer "demands", which means not so much the right but the obligation to obtain personal data from the job applicant (Kowal, 2021, p. 40), including: name(s) and surname, date of birth, contact details indicated by such person, and when it is necessary to perform work of a specific type or in a specific position, also education, professional qualifications, and previous employment history. In the case of data requested from an employee, the provision authorizes the employer to process is, but the refusal to provide data may be a violation of the employee's obligation, not resulting from Article 221 § 3 of the Labor Code, but depending on the type of data, resulting from, for example, Art. 100 (Tomaszewska,

2020, p. 229). It is therefore rightly assumed that the employee's refusal to provide information which the employer demands in accordance with the Labor Code is a violation of employee duties and justifies the application of appropriate sanctions provided for in labor law (judgment of the Supreme Court of August 5, 2008, I PK 37/08, OSNP 2010/1–2, item 4). Based on Art. 221 § 2 Labor Code the employer requires the employee to additionally provide personal data including: address of residence, PESEL number, and in the absence of such a number – the type and number of the document confirming identity, and other personal data of the employee. If the employee exercises special rights provided for in labor law, additional data, including that of the employee's children and other members of their immediate family, might be required. In addition, an employee may be asked to provide data about education and history of previous employment if there was no basis for demanding them in the process of applying for employment, and a bank account number for paying remuneration if the employee did not submit an application for payment of remuneration in cash. In addition to the data indicated above, the employer requests other data only when it is necessary to exercise rights or to fulfill obligations arising from the law (Art. 221 § 4 of the Labor Code). Each of the grounds for processing personal data is autonomous, which means that consent cannot be the basis for data processing when there is another legal basis for it (Kuba, 2020, p. 236). As a rule, processing based on consent applies to personal data provided by the job applicant or employee at the request of the employer, or personal data provided to the employer at the initiative of the job applicant or the employee. However, the processing of biometric data, as a rule, may take place on the basis of the consent of the job applicant or the employee only if such data are provided at their own initiative (Article 221b of the Labor Code). As iis rightly indicated in the literature, any initiation of the consent process by the employer is therefore unacceptable in relation to such data (Kowal, 2021, p. 40).

The employee or applicant provides the employer with personal data in the form of a statement. The employer may also request documentation of the applicant's or employee's personal data only to the extent necessary to verify it (Jaśkowski, Maniewska, 2022). Since the submission of a statement giving consent to the processing of personal data must be explicit, it is assumed that, taking into account Art. 60 of the Civil Code, it will always be a declaration of intent and will be interpreted as such. Neither silence or other form of inaction, nor the so-called consent in the form of a default option, will constitute consent to the processing of personal data (Barta, Kawecki, Litwiński, 2021, p. 137).

In a situation where the employer requests the employee or job applicant to provide data other than that to which they are authorized under the Labor Code, the lack of consent or its withdrawal may not be the basis for unfavorable treatment of the job applicant or employee. Additionally, it may not cause any negative consequences for them, in particular justifying refusal to employ, termination of the employment contract, or termination without notice by the employer. It seems that, in this case, the employee or job applicant could also lie if, due to their circumstances, the refusal of consent could have negative consequences for them (Drozd, 2004, p. 162). Processing personal data to which the employer had no right, e.g. due to the fact that the consent was given by the employee or job applicant in an inappropriate manner as an unlawful activity, exposes the employer to a number of consequences resulting from the violation of provisions on the protection of personal data, in particular civil and criminal liability. In addition, the employee could also, for example, terminate the employment contract without notice pursuant to Art. 55 § 12 Labor Code. The consequence of the consent given by the employee is the legalization of the employer's actions, if they act within the limits of the authorization resulting from the content of that consent. Thus, as a result of the granted consent, the prohibition of interference with the employee's or applicant's personal data resulting from the cited legal norm is lifted against the employer. The structure of consent adopted by the EU legislator allows the employee (job applicant) to independently dispose of specific personal data, and only they, as the authorized administrator of the data, may make a decision allowing another entity to interfere in the sphere subject to their autonomy (Szczucki, 2012, p. 129). In addition, the consent of the data subject, within the scope of their function, is of particular importance, because from the moment the employee gives consent to the employer to process personal data other than that listed in Art. 221 § 1 and 3 of the Labor Code, the employer is the entity authorized to process such data.

It should therefore be emphasized that only consent obtained in compliance with GDPR is a tool that gives employees and applicants for employment effective control over whether their personal data will be processed under the conditions set out in the regulations. Otherwise, this control becomes illusory, and consent given without meeting the cited requirements will be an invalid basis for the processing of the obtained personal data, thereby rendering such processing unlawful.

Conclusion

The analysis of the provisions of GDPR and the Polish regulation contained in the Labor Code indicates the risks that were described in the subject literature in connection with the entry into force of GDPR (Kowal,

2021, p. 38), which subsequently materialized in practice. A fragmentation of the legal order was effected, complicating the application of the relevant provisions, and those provisions of import to employees and job applicants became opaque. The introduction into the Labor Code of the possibility of processing employee and job applicant data on the basis of consent without providing a definition of this consent and indicating that it can be applied in special cases is wholly untransparent and inappropriate, especially taking into account the organizational culture of many Polish enterprises and poor knowledge of the law by employees and job applicants. This is not changed by the fact that in a situation where, pursuant to the Labor Code, the employer is not authorized to process specific data and seeks consent to its processing from the employee or job applicant. The employer should take into account that, in the event of a future dispute, proof that the employee in fact voluntarily gave consent to the processing of personal data will be required. Agreeing in principle with the position that it would be too far-reaching to assume that due to the imbalance inherent in the construction of the employment relationship, the employee/job applicant is never able to give consent voluntarily, the means currently applied for protecting employees against the employer's abuse of its dominant position of the employer is, however, insufficient. It is therefore worth considering whether additional guarantees should be introduced for employees who are particularly vulnerable to pressure from the employer, e.g. in the form of an obligation to consult an independent attorney before granting consent. The attorney's remuneration, especially in the case of low-wage employees, would be reimbursed by the employer in the form of a lump sum.

Przypisy/Notes

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[2] The Labor Code uses the term "person applying for employment"; for the purposes of clarity and consistency, we use the term "job applicant" as a synonym.

[3] https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/legal-grounds-processing-data/grounds-processing/when-consent-valid_pl

[4] Article 7 par. 4 GDPR: "When assessing whether the consent has been given voluntarily, it is taken into account to the greatest extent possible whether, inter alia, the performance of the contract, including the provision of the service, is dependent on the consent to data processing, if the processing of personal data is not necessary for the performance of this contract." See also Recital 43 GDPR, which states: "(...) Consent is not considered freely given if it cannot be given separately for different personal data processing operations, although it would be appropriate in a given case, or if consent is performance of the contract – including the provision of a service – even though consent is not necessary for its performance."

[5] Opinion 15/2011 on the definition of consent (WP187), p. 12.

[6] Recital 42 GDPR.

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