

TEST OF PROPORTIONALITY FOR ASSESSING THE LEGITIMATE INTEREST OF THE CONTROLLER

elaborated in compliance with Art. 6 par. 1 lett. f) of Regulation (EU) 2016/679 of the European Parliament and of the Council on the Protection of Natural Persons with regard to the Processing Personal Data and on the Free Movement of Such Data (further only the “**GDPR**”) and in line with § 13 par. 1 lett. f) Act No. 18/2018 Coll. on the Protection of Personal Data (further only the “**Act**”) (further only as the “**test of proportionality**”)

For the purpose of this test of proportionality the Controller is:

CITY GASTRO s.r.o.

Račianska 71, Bratislava 831 02

Company ID: 46 323 279

Statutory representative: Martin Čatloš, agent

Responsible person: Avris Consulting, s.r.o., with registered seat at Kutlíková 17, Bratislava 852 50, Company ID: 35 962 844, recorded in the commercial register of District Court Bratislava I, division: Sro, file no. 38168/B

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(further only as the “**controller**”)

I. INTRODUCTION

As part of its business activities, the controller also handles the provision of hospitality and the production of ready-made meals for serving lines and the operation of dining canteens (hereinafter referred to as “**dining services**”). The controller provides dining services for students, teachers and other British International School Bratislava employees (further as “**clients**”) on the basis of a contract with the British International School Bratislava (further as “**BIS**”). The legal guardians of students act on behalf of students, as clients of the controller, and they also pay the cost of dining services directly to the controller. Costs for BIS dining services for teachers and other BIS employees are paid by BIS itself.

The controller has created a website for clients to ensure communication between the clients and the controller on the provision of dining services. A client can use this Web site to select a suitable lunch menu or cancel lunch. The legal guardian also has an overview of the cost of dining for his or her children, while BIS provides an overview of the cost of dining for its teachers and other employees. The controller issues a monthly invoice to them based on this data.

In view of the above-mentioned, it is essential that the legal guardian and his/her children, as well as teachers and other BIS employees, be registered on this Web site. Therefore, personal information is an integral part of the information on the Web page. By separation or anonymising of such personal data, the controller could not properly provide its services for BIS, because the necessary communication and billing could not take place.

Under current valid legislation, any processing of personal data must be subordinated to one of the legal bases referred to in Art. 6 par. 1 of the GDPR.

The controller has an interest in processing personal data on the basis of its legitimate interest under Art. 6 par. 1 lett. (f) of the GDPR, except for personal data of a special category which, in accordance

with Art. 9 par. 2 and Art. 6 par. 1 lett. (a) of the GDPR is processed by the controller on the basis of consent.

For the purpose of meeting the conditions for using legitimate interest as the legal basis for the processing of personal data, the controller has prepared this test of proportionality, taking into account, in addition to the applicable legislation, the GDPR and the Act on Personal Data Protection, as well as the Methodological Guidance of the Personal Data Protection Office No. 2/2018 – the Legality of processing.

II. IDENTIFICATION OF A LEGITIMATE INTEREST

1. Purpose of processing personal data

The purpose of processing is communication between clients and the controller regarding the provision of dining services.

2. Legitimate interest of the controller

The primary legitimate interest of the controller is to make a profit and to exercise the right to pursue a business (free enterprise), namely through the provision of paid dining services.

The secondary legitimate interest is the legitimate interest of the controller's clients to have dining services provided in the necessary range and according to their preferences, especially with regard to the fact that they are also children under 16 years of age. The use of the controller's Web site ensures rapid and efficient transmission of information, as well as the information needed to eventually adjust the diet for a particular client, which greatly supports his dietary interests.

A third legitimate interest is the legitimate interest of BIS to ensure that their students, teachers and other employees have dining available in order to fulfil their legal dietary obligations, thus allowing the educational institution to function properly and efficiently, as well as giving their students, teachers and other employees a selection of preferred menus on a specific day, cancelling lunch, thereby saving BIS costs and also allowing clients to have meals according to their preferences, which greatly improves the working environment of teachers and other BIS employees, as well as appropriate student dining.

3. The legitimacy of the interest pursued by the controller

The processing of personal data under the legitimate interest may not be unethical, illegitimate or contrary to good morals.

The controller obtains and further processes only data provided by a client him or herself or from a legal representative and which are necessary for the provision of dining services of the necessary quality. Neither the range of the processed data nor its actual processing show signs of any risks of unethical or unacceptable behaviour. The controller has no intention of connecting dietary preferences with clients' beliefs, and will not question their food intolerances and proceeds only in accordance with the information provided by clients when modifying the diet.

The controller has a legitimate interest in providing these services and performs them under a contract with BIS. The legitimacy of the interest of a controller is also confirmed by the fact that the controller has been providing dining services since 2011 and has this business activity duly registered in the commercial register.

III. THE TEST OF NECESSITY OF USING LEGITIMATE INTEREST AS THE LEGAL BASIS FOR PROCESSING PERSONAL DATA

Necessary processing is when the purpose of the controller's processing cannot be achieved by another less invasive way, or when this purpose could be achieved otherwise but would require disproportionate efforts.

If BIS wanted to collect and regularly update its database of students, teachers and other employees, their preferences, the number of lunches, to respond quickly to lunch cancellations and to adapt dining for a particular person, it would require disproportionate efforts and capacities as well as the risk that more people will have access to this information. The data would probably have to be collected in writing and manually, which would make it impossible for the controller to respond quickly to the amount and type of food provided, which would be a demanding task for BIS, uneconomical for the controller and inflexible for clients.

IV. BALANCE TEST

The interests or fundamental rights and freedoms of the natural persons concerned may not outweigh the legitimate interest of the controller or of a third party. For determining whether the controller's legitimate interest is a predominant element over the interests of the persons concerned, the controller conducted a balance test, the focus of which was assessing in particular the following questions:

1. Could the data subject reasonably expect that his/her personal data will be processed?

Certainly yes. The data subject expects BIS to provide him or her with dining services and is told in advance by BIS that meal management will be handled through the controller and its Web page, where he or she provides information him or herself or through the legal representative.

2. Is there a previous relationship between the controller and the data subject?

No prior relationship exists between the controller and the data subject; however, there is a contractual relationship between the data subject and BIS and a contractual relationship between BIS and the controller, which contractually regulates the relationship between the controller and the data subject.

3. Does the original purpose of data processing correspond to the purpose of the processing defined by the controller and its legitimate interest?

Yes, the original purpose for processing personal data is the same as the purpose of the processing defined by the controller and its legitimate interest, i.e. communication between clients and the controller regarding the provision of dining services. The controller has no intention of changing that purpose during the processing of personal data.

4. What impact does the processing of personal data have on the data subject and on the controller?

In assessing the impact of its planned processing of personal data, the controller primarily bases it on the fact that it is primarily in the interest of the data subjects to make available to him the data that he can use to ensure sufficient dining. The controller does not carry out any operations that would be a misuse or mishandling of the data entrusted to it, nor would it in any way trouble the data subjects in relation to the personal data being processed.

At the same time, the controller eliminates the misuse of this data by third parties, because the provision of services does not represent any or a minimal interference into the interests, fundamental rights and freedoms of the data subjects. The aim is to prevent a disproportionate impact on the data subjects.

In the context of the test of proportionality, determining the extent of the personal data processed, in particular focusing on a specific category of data, such as data on religion, faith and health data, is important. The controller has no intention of assessing the unsuitability of the food in relation to a client's religious beliefs. However, the controller processes the data relating to the health of the data subject in the scope of a food intolerance, but it does not do so on the basis of a

legitimate interest but with the consent of the data subject, who confirms this in the application form on the controller's website. In the legitimate interest the controller processes only general information, such as the address, name, surname and billing address of the student's legal representative; the name, surname, date of birth and year of student; the address, name, surname and date of birth of the teacher and other BIS employees, as well as an overview of the number of lunches provided to a particular client.

5. Has the controller fulfilled the obligation to provide information to the data subjects?

The controller informed the data subjects about the conditions for processing their personal data [here](#):

6. Does the data subject have the opportunity of objecting to the data processing?

The GDPR grants each data subject the right to object to the processing of their personal data, and the controller informs the data subjects of this fact.

The data subject also has other rights granted by the GDPR, but these cannot be exercised absolutely. The controller shall assess each request individually.

7. Did the controller take additional security measures in connection with the processing of personal data?

The controller processes personal data exclusively in an automated form. The controller protects the information technology through which it is possible to access personal data by placing it in a protected area that can be accessed by only a limited range of persons. Physical data carriers (such as USB, hard drives, etc.) are securely stored in lockable spaces.

Only persons authorised by the controller who have been duly informed about their rights and obligations in the field of personal data processing (hereinafter referred to as “**authorised persons**”) have access to personal data. At the same time, authorised persons are bound by the obligation of confidentiality regarding personal data they come into contact with during the performance of their duties, and this obligation extends beyond the time of their employment. At the same time, the controller shall ensure that authorised persons are provided with training in information technology and/or on personal data protection issues.

Authorised persons have access to personal data through information technology by logging in with their own access password. Authorised persons may not divulge, publicize or otherwise disclose their assigned password to unauthorised persons.

The information system is handled by the management of privileged access, which provides for the adjusting of the range of user access rights. At the same time, information technologies record access to and activities carried out in the information system. Only legal software that is regularly updated is used in the information systems. Information technology users are not authorised to download and use illegal or unregistered software. Network security is carried out by means of an active firewall.

Personal data processed by the controller is backed up regularly, and the controller specifies in detail the holding period and inspection of compliance with the conditions. Personal data not needed is securely deleted from data media so that it cannot be reproduced.

In the event of a violation of personal data, authorised persons are instructed in the process of reporting the breach of personal and to take preventive or corrective measures in a timely manner. All security incidents, regardless of their extent, are recorded in the controller's records.

During the development of information systems, the controller always tests their security functions before initiating their operation. The controller regularly monitors and reviews the security of the services provided by its suppliers. Similarly, the controller regularly performs inspection activities aimed at compliance with security measures by authorised persons.

V. ASSESSMENT OF THE TEST OF PROPORTIONALITY AND A DECISION

In the test of proportionality, the controller:

- a) Identified its legitimate interest and the legitimate interest of third parties in the processing of personal data as follows:
 - The controller has a legitimate interest in **achieving profit and in exercising the right to pursue a business (freedom of enterprise)**.
 - Third parties – clients, their legal representatives and BIS – have a legitimate interest in providing the controller’s services for **the purpose of communication between clients and the controller regarding the provision of dining services**.
- b) Evaluated that the processing of personal data on the basis of a legitimate interest is necessary since the monitored goal can only be achieved otherwise with disproportionate effort, which would in no way provide greater legal protection for personal data; in contrast, it would be demanding for BIS, uneconomical for the controller and inflexible for the clients.
- c) Carried out a balance test in which it assessed, on the one hand, the weight of legitimate interests, fundamental rights and freedoms of available persons who would be more affected without the controller’s activity, and on the other hand the legitimate interest of the controller and third parties.
- d) Determined that the rights and freedoms of the data subject **do not outweigh the legitimate interests of the controller and the legitimate interests of third parties – clients, their legal representatives and BIS**.

On the basis of the above-mentioned and in line with the applicable legislation and taking into account the supporting legal documents used, the controller took the decision that it has a legitimate interest in processing personal data of the data subjects for the purpose of mutual communication in the framework of the provision of dining services.

Status as of 15 June 2019.