



Laga Newsflash

Subcontracting personal data processing: does GDPR require an agreement?

Since GDPR's entry into force, many companies have asked their business partners (clients, suppliers, subcontractors) to enter into a data processing agreement with respect to personal data.

GDPR requires every controller (the employer is almost always a controller) to conclude a specific data processing agreement with all of its processors (i.e. entities that process personal data on behalf and under instructions of the controller).

While this obligation does exist under GDPR, it does not imply that such an agreement must necessarily be concluded with all business partners to whom personal data are transmitted.

Verification is needed on whether the business partner in question is a **controller** (determines the purposes and means of processing) or a **processor** (processes data on behalf and under instructions of the controller). The distinction can be complex and should be ensured separately for each processing activity.

A typical example of processors are payroll agencies (as part of their payroll management activities), accountants (when processing personal data according to their client's instructions) or IT service providers providing data storage services. For such service providers, the conclusion of a data processing agreement is required by GDPR.

Commercial transaction clients, law firms or auditors are, in principle, controllers. The same applies to insurance

companies (e.g. occupational accident-, group- and hospitalisation insurance). Such service providers do not qualify as processors. Their activities involve such a level of autonomy that they themselves usually determine the purposes and means of processing the data they receive. As a result, it is needless to enter into data processing agreements with them, since these partners are controllers.

In any case, the exact capacity of a business partner must be determined on a case-to-case basis, and the assessment may not always yield a straightforward answer.

Laga's Data Protection team is readily available to help companies determine, for each type of personal data recipient, which GDPR-based obligations must be complied with.

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