

How far can a consent serve as a justification for data processing on a blockchain driven business case?

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- ≡ Bits about LEXcellence and me
- ≡ Challenges GDPR v. Blockchain
- ≡ *Blockchain – Blodon v. GDPR* - real life example
- ≡ Our Approach

- ≡ Is located in Baar, Canton of Zug "Crypto Valley"
- ≡ Has an international DNA
- ≡ Loves new technologies, challenges & disruption

- ≡ Attorney at Law admitted in the EU - Poland & Switzerland
- ≡ International education
- ≡ International experience

- ≡ Data Controller – one or many? joint controllers? chain of controllers
- ≡ Rights of the data subject - can be realized at all and towards whom?
- ≡ Right to issue and to **withdraw** consent for processing
- ≡ Right to **rectification**
- ≡ Right to erasure (**‘right to be forgotten’**)
- ≡ Right to **restriction** of processing

- ≡ www.blodon.com
- ≡ Bloodchain is a social blood-bank and an Uber for blood, which can deliver blood when it is needed on demand, reducing drastically the necessity of long-term blood storage as the storage is the human body itself
- ≡ All the necessary (sensitive data by definition) of a blood donor (data subject) on demand is stored via blockchain (and) in publicly tradeable tokens
- ≡ All personal data are currently processed **based on the consent** of the data subject
- ≡ What will happen if the data subject **withdraws** the consent?

- ≡ Personal data any information relating to an **identified** or **identifiable natural person** (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person
- ≡ Sensitive Data (special categories of data) - data revealing **racial** or **ethnic** origin (...) and the processing of **genetic** data, biometric data for the purpose of uniquely identifying a natural person, data concerning **health** or data concerning a natural person's sex life or sexual orientation

- ≡ Processing of data shall be lawful only if and to the extent that at least one of the following applies:
- ≡ the data subject has given **consent** to the processing of his or her personal data for one or more specific purposes
- ≡ processing is necessary for the performance of a **contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract
- ≡ processing is necessary **for compliance with a legal obligation** to which the controller is subject;
- ≡ processing is necessary in order **to protect the vital interests** of the data subject or of another natural person;
- ≡ processing is **necessary** for the performance of a task carried out in **the public interest** or in the exercise of official authority vested in the controller
- ≡ processing is necessary for the purposes of the **legitimate interests** pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child

- ≡ Processing of data revealing racial or ethnic origin (...) and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning **health** or data concerning a natural person's sex life or sexual orientation shall be **prohibited**
- ≡ Processing of data shall be **lawful** only if and to the extent that at least one of the following applies:
- ≡ the data subject has given **explicit consent** to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject
- ≡ processing is **necessary to protect the vital interests** of the data subject or of another natural person **where the data subject is physically or legally incapable of giving consent**
- ≡ processing is necessary for **reasons of substantial public interest**, on the **basis of Union or Member State law** which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject
- ≡ processing is necessary for (...) **scientific research purposes** or statistical purposes in accordance with Article 89(1) **based on Union or Member State law** which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject

- ≡ **Consent** - freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her and for a **specified purpose**
- ≡ **Explicit** in relation to sensitive data
- ≡ **Conditions for consent:**
- ≡ the controller shall be able to **demonstrate** that the data subject has consented to processing of his or her personal data
- ≡ given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is **clearly distinguishable** from the other matters, in an intelligible and easily accessible form, using clear and plain language.
- ≡ The data subject shall have the right to **withdraw** his or her consent **at any time**

- ≡ Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; **however further processing** for archiving purposes in the public interest, **scientific** or historical **research** purposes or statistical purposes shall, in accordance with Article 89(1), **not** be considered to **be incompatible with the initial purposes** (‘purpose limitation’)
- ≡ Processing for archiving purposes in the public interest, **scientific** or historical **research** purposes or statistical purposes, shall be subject to appropriate **safeguards**, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of **data minimisation**. Those measures may include **pseudonymisation** provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner

- ≡ Pseudonymisation' means the processing of personal data in such a manner that the personal data **can no longer** be attributed to a specific data subject **without the use of additional information**, provided that such additional information is kept **separately** and is subject to technical and organisational measures to **ensure** that the personal data are **not attributed** to an **identified** or **identifiable** natural person

- ≡ Pseudonymize data as soon as possible and use other safeguards
- ≡ Respect the withdrawal of the consent as far as possible
- ≡ Inform the data subject about the purpose related to scientific researches
- ≡ Start scientific researches
- ≡ Stop processing for other purposes, unless justified otherwise

Your turn

- ≡ Questions?
- ≡ Statements?

Thank you!

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