

JUS5630 Autumn 2023

Please address the following exam tasks, applying European law on privacy and data protection.

In grading the answer, the exam tasks will be weighted as follows. The answer to exam tasks 1(a), 1(c) and 2 will count for approximately 75% of the final grade (each answer counting approximately 25%), while the answer to task 1(b) will count for approximately 10% and the answer to task 3 approximately 15%.

1. Consider the following scenario: Alexandra (A), a 25 year old student living in Oslo, applies for a credit card issued by Big Business (BB). Her application is granted. The credit limit for A is initially set at NOK 40,000 [NOK = Norwegian kroner]. This is the standard default limit that BB sets for people above 20 years of age living in Norway. Six months later, BB reduces the limit to NOK 25,000. The reduction is not based on an individual assessment of A's repayment history; indeed, A has not had any documented problems in repaying amounts owing through use of the credit card. The reduction is based on computer assessment of statistical demographic factors of the area in which A lives—an area where numerous low-income earners and recipients of social welfare benefits reside. Alexandra thinks that the reduction is unfair. Having studied data protection law, she is aware of Article 22 of the GDPR. She complains to BB alleging that Article 22 has been breached. BB responds by claiming that there has been no breach of Article 22 as the data that is the basis for the reduction is not personal data, only aggregate statistical data. A then brings a complaint to the Norwegian Data Inspectorate (Datatilsynet), alleging breach of Article 22.

1(a) You are the case officer at the Inspectorate charged with assessing the merits of the complaint and BB's response. Provide your assessment of both and give reasons for your viewpoints. Your answer need only focus on Articles 22 and 4 of the GDPR.

1(b) Consider the following variation on the above scenario: A threatens BB that she will go to court to sue BB for breach of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). You are a lawyer employed by BB to provide legal advice on the merits of her threat. Provide your advice to BB and give reasons for your advice. Your answer need only focus on the ECHR.

1(c) Consider the following subsequent scenario: A inherits a substantial amount of money and decides that now is the right time to buy an apartment in Oslo, particularly due to the flattening out of real estate prices. In light of her poor experience with BB, she approaches another bank, Easy Loans (EL), to set up a meeting regarding a possible bank loan for the apartment. She contacts EL via e-mail to set up the meeting. At the meeting, A does not get a good impression of EL and she decides not to become a customer of the bank. EL, however, plans to add A's e-mail address, <alex@greenparty.org> to its customer e-mail database and then allow Meta/Facebook to match that database with the list of e-mail addresses held by Meta/Facebook, in order to target the individuals concerned with online advertising of EL's full range of financial services.

You are the Data Protection Officer of EL and asked to provide advice as to whether EL's plan conforms with the GDPR. Provide your advice and give reasons for your advice,

including references to the relevant provisions of the GDPR in light of case law from the EU Court of Justice and guidance from the European Data Protection Board.

2. Consider the following statement: “The provisions of Article 25 GDPR are a welcome innovation in EU data protection law”. Do you agree? Give reasons for your view.

3. A Chilean company, Great Shoes (GS), with headquarters in Santiago runs a business selling shoes to customers in Chile and neighbouring countries in South America. It engages a Spanish company, Fast Computing (FC), established in Barcelona, to process personal data relating to GS’s customers. GS’s business operations are directed only at the South American market and its customers are all in South America.

You are a lawyer employed by FC and you are asked to determine whether the GDPR applies to GS and to FC’s processing of GS’s customer data. You are also asked to determine which provisions of the GDPR may apply to FC’s processing of GS’s customer data, if the processing falls within the GDPR’s ambit. Provide reasons for your answer.