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# EDPB GUIDELINES ON LEGITIMATE INTEREST

OUR RESPONSE THE PUBLIC CONSULTATION



## 1. INTRODUCTION

ACCIS is the voice of organisations responsibly managing data to assess the financial credibility of consumers and businesses. Established as an association in 1990, ACCIS brings together more than 50 members from countries all over Europe as well as associates and affiliates across the globe.

ACCIS welcomes the opportunity to provide our comments regarding the European Data Protection Board (EDPB) guidelines on legitimate interest. Our response highlights areas of agreement as well as sections where further clarification or amendment may be beneficial to ensure a balanced application of legitimate interest provisions in the context of consumer credit information processing.

As preliminary, more general comments, we would like to underline:

- The role of the GDPR in strengthening individuals' fundamental rights in the digital age and facilitating business by clarifying rules for companies and public bodies in the digital single market. The GDPR – and its body of interpretation – should address the current fragmentation across different national systems and reduce unnecessary administrative burdens.
- The fundamental importance of financial and economic information sharing (including personal data) for any democratic society. Such sharing supports transparency, fosters fair competition, promotes financial stability, contributes to economic development, enhances consumer protection, and informs sustainable business decision-making and practices. Processing accurate, financially relevant information and validating the accuracy of information shared by a data subject constitutes a legitimate interest, as it is critical for informed decision-making. Financial institutions expect such validation from providers of credit information services when conducting creditworthiness assessments (see, for example, Article 18.3 of the revised Consumer Credit Directive, CCD2).
- The contributions of other EU legal initiatives, such as the Public Sector Information Directive and Open Data Directive, which highlight the legitimate expectations for data sharing between the public and private sectors. Providers of credit information services play a vital role in fostering innovation and developing new services through data sharing. Furthermore, the AML Directives emphasise that the sharing and processing of information are necessary to fulfil anti-money laundering requirements

## SUPPORTIVE COMMENTS ON EDPB GUIDELINES

1. **Clarification of legal bases hierarchy (Introduction).** We commend the EDPB's guidance that no hierarchy exists among legal bases under Article 6(1) GDPR. This aligns well with our operational requirements and validates the flexibility to choose the most appropriate legal basis, including legitimate interest, provided that specific criteria are met.
2. **Legitimate interest goes beyond legal boundaries (paragraph 17).** We appreciate the explicit recognition that legitimate interest does not exclusively refer to interests enshrined in or determined by law, as affirmed by the ECJ.
3. **Balancing test and safeguards (paragraph 33).** We support the guidelines' recommendation of a balancing test to ensure that data subject rights are duly considered. This is a critical tool for transparency and fairness, which should be seen as a pre-emptive solution to minimise potential conflicts between industry interests and individual rights.
4. **Profiling and automated decision-making (paragraph 82).** We welcome the EDPB's clarification that not all profiling falls under Article 22 GDPR. Differentiating profiling activities from fully automated decisions allows for more context-appropriate applications and safeguards around data processing
5. **Right to rectification in profiling (paragraph 86).** We support that the EDPB highlights that data subjects do not have a right to rectification when the processing outcome is an expression of opinion within the context of profiling, provided the data basis is correct and the profiling methodology is scientifically validated. This clarification is relevant for consumer credit information providers, as it acknowledges that certain assessments—though subjective—are permissible and not subject to rectification requests if the foundational data is accurate.

## SUGGESTED AMENDMENTS TO EDPB GUIDELINES

1. **“Strictly” necessary (paragraph 13).** The guidelines state that the controller may rely on legitimate interest only if it has assessed and concluded that the envisaged processing is strictly necessary for pursuing such an interest. On this point, the guidelines introduce a processing restriction that is not generally supported by the GDPR.
2. **Definition of 'third party' (paragraph 20).** We think that it is important to clarify 'third party' specifically as the recipient of data rather than any unrelated third party. This would provide greater specificity and avoid overly broad interpretations of legitimate interest applications.
3. **Necessity and proportionality of processing (paragraph 30).** We think that the EDPB should consider the operational challenges of a stringent necessity requirement, especially when processing in the interest of a third party. The guideline's strict interpretation may inadvertently impose higher thresholds than necessary for third-party processing.
4. **Reasonable expectations (paragraphs 52 and 53).** The EDPB considers that an exclusively subjective standard should apply when determining the reasonable expectations of data subjects. However, it is unclear how controllers are expected to gauge the emotional state of data subjects. Furthermore, we strongly believe that fulfilling information obligations should positively influence reasonable expectations. The guidelines' stance on transparency could be expanded to acknowledge that adequately informed data subjects are less likely to object to processing activities.
5. **Right to objection (section 4) and right to erasure (section 5).** In line with our general comments, the guidelines should acknowledge that providers of credit information services have compelling and overriding legitimate grounds to maintain their databases as updated, accurate, and complete. The guidelines should provide a robust reference to the processing activities of credit information service providers, emphasising the necessity of keeping their information current and accurate to facilitate its sharing with those who require it. Failure to include such provisions may undermine the controller's ability to demonstrate “compelling legitimate grounds” or “overriding legitimate grounds,” as stipulated in the guidelines.
6. **Information from the balancing test (paragraph 68).** The guidelines introduce a “transparency obligation” for controllers, whereby data subjects should be informed about the documented weighing decision, at least upon request. Such an obligation cannot be inferred from the Law, nor from Article 13(1)(d).
7. **Accuracy of indirect data collection (paragraph 84).** We fear that the EDPB's assumption that data accuracy is diminished in indirect collection contexts may not hold for consumer credit data, which is often accurate and thoroughly verified. We recommend revisiting this assertion to better reflect the credit industry's rigorous validation protocols. In addition, we note that providers of credit data services should be able to trust the information provided from the public sector, i.e. completely to the contrary to the statement in the guidelines “as the likelihood of inaccuracies and incompleteness is generally higher in such situations”. In fact, the risk for likelihood of inaccuracies and incompleteness is higher in some cases when the information is shared by the data subject as the data subject may want to hide information depending on what it wants to achieve (see comment above regarding validation of information).
8. **GDPR compliance measures as "mitigating measures" (paragraph 87).** The EDPB argues that mitigating measures must go beyond what is legally required by the GDPR. So, to offset impacts on data subjects' rights and freedoms under Article 6(1)(f), controllers should adopt extra measures like enhanced data subject rights beyond standard GDPR provisions. We question this approach. Fulfilling these basic GDPR obligations, such as providing transparent information or honouring data subject rights, should indeed help demonstrate that the controller has addressed privacy risks responsibly. We think that demonstrating compliance should positively impact the balancing test, even if these steps are already mandatory.
9. **Fraud prevention (paragraph 101).** The EDPB's approach makes fraud prevention appear as if it faces especially tough requirements under the balancing test, likely due to the EDPB's view of it as highly intrusive processing. We believe that the EDPB's guidance on this point might make it overly challenging to justify fraud prevention as a legitimate interest. We are concerned that the stringent balancing of interests may not

adequately account for the fact that fraud prevention is both necessary and beneficial for consumers, as it protects them from fraud and financial harm.

10. **Combating fraud is too generic (paragraph 106).** The EDPB states that simply listing "combating fraud" as a purpose is too generic and does not satisfy the GDPR's transparency and documentation requirements. According to the EDPB, organisations should clearly outline the specific nature, scope, and objectives of their data processing activities related to fraud prevention. We are concerned about how detailed these explanations need to be in practice. For example, does the EDPB expect organisations to explain specific types of fraud being targeted, the data sources used, or the exact methods of fraud detection? We think that setting overly granular requirements could lead to unnecessary complexity in privacy policies and documentation, making it challenging for organisations to meet compliance standards without overloading data subjects with information.

## SPECIFIC REFERENCE TO CREDIT DATA AND CREDITWORTHINESS ASSESSMENTS

We appreciate that paragraph 16 acknowledges the CJEU's recognition that assessing the creditworthiness of individuals is, in principle, an interest capable of being regarded as legitimate. This position aligns the EDPB with similar views previously expressed by the former Article 29 Working Party<sup>1</sup> and national data protection authorities.

It would provide our industry with additional legal certainty if the guidance included an example illustrating how the credit reference industry identifies the purpose of its data processing and determines whether it qualifies as a legitimate interest. For example:

### Example

Lenders share data with Credit Reference Agencies (CRAs) about the payments made by an individual on an account. That data is then shared with any other lender that the individual makes an application to, so they can assess the individual's ability and inclination to repay a loan.

- The lender wants to accurately assess the likelihood that they will get back the money they lend out.
- The benefit is to minimise the risk of bad debts and ensure that the lender makes sustainable lending decisions to achieve a reasonable overall rate of return.
- It is also in the interests of the individual making the application that lenders make responsible lending decisions and do not allow them to become overburdened with debt they can't afford.
- Finally, it is in the interests of the public that lenders can make accurate risk assessments when making lending decisions. Without this, lenders may be less willing to lend, or at least lend at a reasonable interest rate.
- These benefits are vital to the proper functioning of the credit system.
- The intended outcome for the individual is that they will either be granted or refused credit on the basis of their ability to repay.
- The lenders comply with relevant consumer credit laws and standards.

The lenders have demonstrated a clear and specific legitimate interest and have a good foundation for demonstrating necessity and objectively considering the balance of interests.

## CONCLUSION

We appreciate the EDPB's efforts to clarify the application of Article 6(1)(f) GDPR. While supportive of the guidelines, the recommendations above reflect specific adjustments to enhance clarity and practical applicability within the consumer credit industry. We remain committed to adhering to GDPR standards, ensuring transparency, and safeguarding data subject rights.

<sup>1</sup> In its opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC, the former Article 29 Working Party stated that "Credit reference checks prior to the grant of a loan are also not made at the request of the data subject under Article 7(b), but rather, under Article 7(f), or under Article 7(c) in compliance with a legal obligation of banks to consult an official list of registered debtors".



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