

Feedback

European Data Protection Board

Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR

Nov 2024

Overview

European Data Protection Board (EDPB) has published guidelines on processing of personal data based on Article 6(1)(f) GDPR.

Article 6(1)(f) GDPR pertains to Legitimate Interest, as one of the legal bases, for lawful processing of personal data. Applicability of Legitimate Interest is driven by three cumulative conditions:

1. Pursuit of a legitimate interest by the controller or by a third party;
2. Need to process personal data for the purposes of the legitimate interest(s) pursued;
3. Interests or fundamental freedoms and rights of the concerned data subjects do not take precedence over the legitimate interest(s) of the controller or of a third party.

Data Controllers need to assess if the three cumulative conditions are really met. The current guidelines provide guidance to Data Controllers to carry out this assessment.

The guidelines provided by EDPB will go a long way, in helping organizations choose “Legitimate Interest”, as an appropriate legal basis for data processing, depending on the applicable context of data processing.

TCS' feedback

Specific feedback related to various sections mentioned in the guidelines document “**Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR**”¹, is provided below:

Chapter/Clause No	Description	Feedback
#49	Moreover, if high risks are identified in the context of this assessment, the controller should consider performing a Data Protection Impact Assessment (DPIA) in accordance with Article 35 GDPR	It is possible that processing does not require DPIA based on the criteria defined in GDPR article 35. For example, the process is not based on automated decision making, does not profile or conduct systematic monitoring etc. Basically, process does not result in a high risk to the rights and freedoms of natural persons. However, LIA identified processing as high risk for rights and freedom of the data subjects. Clarity is needed that if the LIA outcome needs to be treated as one of the DPIA criteria in addition to already provided criteria in GDPR article 35 and published list from the respective supervisory authorities.

¹ https://www.edpb.europa.eu/our-work-tools/documents/public-consultations/2024/guidelines-12024-processing-personal-data-based_en

Conclusion

EDPB has published a very comprehensive guidance for Data Controllers, on the scenarios of choosing “Legitimate Interest” as the legal basis for data processing and the recommended way to execute Legitimate Interest Assessments. This is expected to help Data Controllers immensely, as Legitimate Interest Assessments can prove to be a challenging exercise for Data Controllers. We would like to complement EDPB, and its officers, for publishing these guidelines and soliciting public consultation. TCS would be happy to engage further and elaborate on some of the points highlighted above in the submission.

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