POSITION PAPER

ESBG response to the **EDPB Call for Feedback on Anonymisation Guidelines**

ESBG (European Savings and Retail Banking Group)

Rue Marie-Thérèse, 11 - B-1000 Brussels

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ESBG

The European Savings and Retail Banking Group welcomes the European Data Protection Board's (EDPB) efforts to provide greater legal certainty through its draft Guidelines on Anonymisation. These Guidelines address increasingly important questions arising from the growing use of data-driven technologies, AI systems, and data-sharing ecosystems. At the same time, ESBG believes that several aspects of the draft Guidelines would benefit from further clarification to ensure consistent application and practical implementation. In particular, the draft Guidelines leave a number of key legal, operational, and accountability issues insufficiently addressed, including for example the application of data subjects' rights, purpose limitation, international data transfers, AI-specific risks, and documentation requirements. Greater guidance in these areas would strengthen legal certainty for controllers while maintaining a high level of protection for individuals. The following identify the main shortcomings and gaps that ESBG believes should be addressed to provide effective and efficient guidance on anonymisation.

02/2026 Guideline on Anonymisation:

I. Additional clarification

Further defining the "Insignificant Likelihood" Standard

The Guidelines' central legal threshold, that *the likelihood of re-identification need not be zero but should be "insignificant in reality"*, is the core operative standard, yet it is never quantified or operationalised. No statistical benchmarks, risk-scoring methodologies, or empirical reference points are offered. As such, ESBG believes that controllers and supervisory authorities are left with an undefined standard that provides limited practical guidance and may yield inconsistent application across Member States.

Insufficient Treatment of the Purpose Limitation Principle

The Guideline identifies that anonymisation requires a legal basis under Article 6 GDPR and that this basis is presumed to coincide with the legal basis of the preceding processing activity where anonymisation forms part of the same activity. However, the guidelines do not address the scenario where anonymisation is undertaken for a purpose that is distinct from the original collection purpose. Article 6(4) GDPR and Recital 50 require a compatibility assessment for further processing, and the document provides no guidance on how that assessment applies specifically to anonymisation projects. As a result, ESBG believes this is a significant gap, particularly where anonymisation is used to enable secondary uses of data (e.g., research or commercial analytics) that differ from the original purpose, which should be clarified in the Guideline.

Finalising the contractual Prohibition Analysis

The Guidelines correctly note that a contractual prohibition should not be treated as equivalent to a legal prohibition by law, and that contractual measures should only complement technical measures. However, the analysis here is brief. The document does not address the circumstances under which

contractual measures, such as binding data use agreements, data access frameworks under the Data Governance Act, or standard contractual clauses, can meaningfully reduce the likelihood of re-identification, or how their interaction with technical measures should be assessed. Given the proliferation of data-sharing agreements across EU data spaces (explicitly identified as a driver for these Guidelines), ESBG believes that this is an underdeveloped area.

Specifying the Interaction Between the Simplified and Contextual Approaches

The Guidelines clarify that the simplified approach is not an alternative legal standard, and that using it means voluntarily overestimating the risk of re-identification. However, the document does not address the legal consequences flowing from a controller who has relied exclusively on the simplified approach to treat data as personal, when in fact a contextual analysis would have determined it to be anonymous. ESBG therefore proposes further clarification to resolve the question of accountability, particularly regarding record-keeping obligations for genuinely anonymous data under the simplified approach.

Expanding the Guidance on the "Effect" Limb of the "Relates To" Test

The "effect" criterion for whether information relates to a person is illustrated by the example of taxi location data collected for optimising itineraries, which also reveals when drivers are taking breaks. However, the broader analytical framework for applying the "effect" criterion to aggregate data or AI-generated outputs is not developed. In particular, the guideline does not address how group-level or population-level data may produce discriminatory effects that still relate to identifiable individuals, a question increasingly relevant to AI systems, credit scoring, and insurance pricing.

Addressing Membership Inference

The Guidelines acknowledge that membership inference (the ability to infer that an individual's data was included in the original dataset) may be the first step for further inferences or may itself reveal information about the individual. However, the document does not provide structured guidance on how to test or mitigate membership inference risk, particularly in the context of AI model training. In this context, since membership inference attacks are an established and significant threat, ESBG believes that the cross-reference to EDPB Opinion 28/2024 on AI models is insufficient as a substitute for substantive guidance in this Guideline.

II. Gaps in the addressed GDPR topics

Data Subjects' Rights During the Anonymisation Process

The Guidelines acknowledge that GDPR principles apply to the processing operations carried out to obtain anonymous information. However, the document does not address the rights that data subjects may exercise during the anonymisation process itself, particularly:

- The right of access (Article 15): whether a data subject can request access to the data being subjected to anonymisation;
- The right to erasure (Article 17): whether a data subject's erasure request, received whilst anonymisation is underway, must be honoured and with what practical consequence;
- The right to object (Article 21): whether a data subject may object to the processing for the purpose of anonymisation; and
- The right to restriction (Article 18): whether processing for anonymisation can be restricted pending the resolution of a dispute about accuracy or lawfulness.

These are practically significant questions, particularly in data-intensive research and commercial contexts.

Records of Processing Activities (Article 30 GDPR)

The Guidelines instruct controllers to ensure adequate documentation of the anonymisation process, including for testing of supposedly anonymous datasets, and to retain such documentation after completion. However, there is no discussion of the Article 30 ROPA obligation: specifically, whether the anonymisation processing itself must be recorded in the ROPA, whether a ROPA entry should be maintained for anonymised datasets (given that once data is truly anonymous, the GDPR no longer applies), and how transitions from personal to anonymous data should be reflected in a controller's ROPA over time.

International Data Transfers (Chapter V GDPR)

On the topic of how anonymisation interacts with the rules on international data transfers, the guidelines could be expanded to include questions such as:

- If a controller claims that data is anonymous for a recipient outside the EEA, but the Guidelines themselves acknowledge that anonymity is perspective-dependent, does Chapter V GDPR still apply from the controller's perspective at the time of transfer (consistent with the EDPS v SRB reasoning)?
- Where data is transferred to a third country and subsequently re-identified by the recipient, what obligations arise for the original transferring controller?
- The CJEU's analysis in EDPS v SRB — that the controller's perspective at the time of collection governs the applicability of certain obligations, regardless of the recipient's perspective — strongly implies that Chapter V safeguards may still be required even where data is intended to be anonymous for the recipient. The Guidelines do not draw this connection explicitly.

Specific Guidance on the Anonymisation of AI Training Data and Synthetic Data

The Guidelines cite developments in AI as one of the principal reasons for updating the 2014 Opinion. Despite this, the specific context of anonymising AI training datasets receives only passing treatment. ESBG therefore believes that the guidelines should provide structured guidance on:

- How the three criteria apply to training datasets, fine-tuned models, or synthetic data generated by AI systems;
- How to assess the re-identification risk embedded in model weights (i.e., model inversion attacks);
- The interaction with the EDPB's Opinion 28/2024 on AI models, which is cited but not substantively integrated; and
- How anonymisation requirements apply to AI-generated synthetic data intended to replicate statistical properties of an original personal dataset.

Storage Limitation and Original Data Retention

The Guidelines explicitly state that they "do not provide guidance for the interpretation of existing specific legal provisions that may mandate erasure of the original data." Whilst this limitation is acknowledged, the document also does not address the more general question of how the Article 5(1)(e) storage limitation principle applies to the original personal data once anonymisation has been carried out, that is, under what circumstances continued retention of the original dataset alongside the anonymised version would itself constitute a breach of the storage limitation principle or of the data minimisation principle under Article 5(1)(c).

About ESBG (European Savings and Retail Banking Group)

ESBG represents the locally focused European banking sector, helping 32 savings and retail banks in 27 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. Advocating for a proportionate approach to banking rules, ESBG unites at EU level some 859 banks, which together employ 620,000 people driven to innovate at 37,000 branches. ESBG members have total assets of € 6,35 trillion, provide € 3,72 trillion in loans to customers, and serve 163 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable and responsible 21st century banking.

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European Savings and Retail Banking Group – aisbl
Rue Marie-Thérèse, 11 ▪ B-1000 Brussels ▪ Tel : +32 2 211 11 11 ▪ Fax : +32 2 211 11 99
Info@wsbi-esbg.org ▪ www.wsbi-esbg.org

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