



## **EDPB Draft Recommendations 2/2025 on the legal bases for requiring the creation of a customer account in the e-commerce sector**

### **Contribution from the Federation of E-commerce and Distance Selling (FEVAD) – February 2026**

Fevad has taken particular note of the EDPB's draft recommendations on the legal basis for requiring the creation of a customer account in the e-commerce sector. At this stage, and following initial consultations with companies in the sector, this draft has raised serious reservations and concerns among professionals.

Firstly, given the major operational impacts that the implementation of a "guest" mode would entail, Fevad believes that additional time is essential before these recommendations are adopted. We regret that this draft was not subject to prior consultation with stakeholders. Such dialogue appears necessary in order to achieve a balanced position that is adapted to the operational realities of the e-commerce sector, while ensuring a high level of user protection. The companies concerned must also be given the time necessary to thoroughly analyze the concrete consequences of such a change on their information systems, data models, purchasing processes, and customer relationship management. In this context, **Fevad calls on the EDPB to postpone the adoption of the draft in order to allow for in-depth dialogue with industry players.** Such consultation would enrich the EDPB's work with specific and substantiated operational examples, ensuring a realistic assessment of the costs, constraints, and practical effects of the proposed recommendations.

Furthermore, while Fevad recognizes that mandatory account creation and "guest" options coexist in today's e-commerce market, it would like to emphasize that requiring users to create an account in order to access a service or make an online purchase remains a widespread practice in Europe. By favoring the "guest" mode as the default model, the draft recommendations does not take sufficient account of the diversity of business models, the importance for each player of being able to differentiate themselves through their own services and/or customer experience, internal organizations, and the operational realities specific to players in the sector.

Fevad wishes to reiterate e-merchants' commitment to complying with the GDPR, particularly the principles of minimization, transparency, and security. In this regard, the systematic development of guest accounts cannot be presented as a lever for strengthening personal data protection. In practice, the guest account alternative would not limit the personal information that must be processed and would not guarantee a higher level of security: the volume of data to be processed at the time of purchase is often greater (such as address and payment information) than that usually processed when creating an account (which in most cases only requires a first name, last name, email address, and password) and the repeated collection of data resulting from the guest experience is likely to increase the risk of phishing, as this type of practice continues to spread and become more sophisticated. It is therefore essential to **favor an approach based on compliance with practices and respect for the principle of accountability, rather than on limiting collection methods.**

In this context, Fevad considers that companies must retain the freedom to choose whether or not to offer their customers an alternative to creating an account in order to interact with their website or application and make a purchase. It therefore ally challenges the approach taken by the EDPB, which tends to introduce a blanket ban on mandatory account creation, even though the assumptions underlying this ban are questionable and the issues raised go far beyond the sole field of data protection.

This note aims to outline the main points of concern identified by the profession, to highlight the reasons for and advantages of customer accounts for both businesses and consumers, and to warn of the significant economic impacts that adopting the draft as it stands would have. It also calls on the EDPB to re-examine its legal approach, favoring a case-by-case analysis, as permitted by the GDPR.

### **The reasons for and advantages of mandatory user accounts, reflecting operational realities and strategic choices made by businesses**

First and foremost, Fevad wishes to highlight the advantages that user accounts can offer, both for businesses in the organization of their activities and for consumers in their shopping experience and order management.

For some players, the requirement to create a user account stems primarily from a choice of economic and organizational model that sometimes dates back to the early days of the Internet and underpins the overall architecture of websites. The customer account provides a foundation for streamlining order management, after-sales service, and, more broadly, customer relations. Indeed, e-commerce is not limited to the act of selling in the strict sense, but is part of an overall user experience that includes monitoring the commercial relationship and regular interaction between the professional and the customer.

In this context, the user account contributes to a structured customer experience by providing access to a range of order-related services within a dedicated personal space. In particular, it provides easy access to order information through individual and confidential authentication, as well as centralizing features related to order tracking, modification, or cancellation. The customer account also facilitates exchanges with customer service, offering users a single point of entry for their requests, whether they concern questions about the order, delivery, or after-sales service.

This organizational framework also facilitates the exercise of rights guaranteed by European consumer law. For example, in the event of a complaint or request to enforce the legal guarantee of conformity, the customer account allows users to quickly and easily exercise their rights independently, and allows e-merchants to authenticate the request and ensure smoother processing, particularly in terms of refunds or exchanges, to the benefit of the customer and with minimal friction.

The creation of an account can also enrich the customer relationship, subject to user consent, by centralizing the data necessary to improve service quality and develop complementary services, such as loyalty programs or user experience personalization. These practices are essential levers of competitiveness in a highly competitive environment and meet consumer expectations. In this regard, according to a Salesforce study, 85% of consumers expect a personalized customer experience, and 80% of customers say that the experience provided by the company is as important as its products and services<sup>1</sup>. Creating an account therefore makes it possible to meet this customer expectation.

For some e-merchants, user accounts are also a tool for organizing security measures. By centralizing information related to transactions and customer interactions, they facilitate the monitoring of operations, the detection of anomalies, and the management of risks in terms of fraud, data protection, and payment reliability, thereby contributing to consumer protection. Conversely, the use of "guest" mode leads to the repeated collection of certain information and

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<sup>1</sup> [The figures: Welcome to the era of ultra-personalized customer experience - Fevad, the Federation of E-commerce and Distance Selling](#)

fragmentation of processing, which is likely to complicate the management of data and associated risks, particularly for sites whose technical architecture has historically been designed around customer accounts.

### **The user account, an organizational method that complies with the principles of the GDPR**

The draft recommendations is based on **general assumptions that do not sufficiently distinguish between user accounts designed and operated in accordance with the principles of the GDPR and practices that fail to meet the requirements of data minimization, transparency, and data protection by design.** This approach leads to an excessively restrictive interpretation that does not take into account the principle of *accountability*, which must apply regardless of the methods of collection.

In particular, the draft appears to be based on the assumption that the creation of a user account inherently involves the collection of a greater volume of personal data than the use of a "guest" account. This assertion is unfounded. **Regardless of the browsing mode chosen, placing an online order necessarily involves the collection and processing of certain personal data that is essential for the performance of the contract, such as first and last name, email address, billing and delivery addresses, and payment details.**

In this regard, the method of collection chosen—user account or guest mode—does not alter the nature of the data required for the conclusion and execution of the purchase, as this data is primarily determined by contractual requirements. In practice, the creation of a user account that complies with the GDPR must be based on a limited amount of identification and authentication data and must be part of a separate organizational process, without in itself leading to an increase in the amount of data collected for the purpose of the purchase.

Furthermore, in certain situations, particularly when the customer no longer has access to the communication channel initially used for their order (email address or phone number) and does not have a user account, the subsequent exercise of their rights may require the implementation of additional identification procedures, which may involve the transmission of supporting documents and the establishment of a new verified communication channel, in order to ensure the security of exchanges in accordance with Article 15(3) of the GDPR. This collection of additional information can be avoided when the user has a user account. This facilitates identification and limits the need for additional checks and, therefore, the collection of additional data. The user account is primarily a means of organization that allows data relating to a customer's and orders to be centralized in a dedicated space. Conversely, in the absence of an account, this same data must be entered for each new transaction, in accordance with procedures that are equivalent to the applicable legal requirements. The choice between these different approaches therefore has no impact, as such, on the scope of the obligations incumbent on the data controller, who remains, in all cases, required to comply with all the principles of the GDPR, in particular the principle of minimization.

From this perspective, the debate should not focus on the method of collection as such, but on effective compliance with the principles of the GDPR, which apply regardless of whether or not a user account exists.

The draft recommendations also states, in paragraph 8, that data controllers tend to retain user data, even when accounts are no longer used or will no longer be used. However, this analysis is based on an implicit assumption that the archiving and deletion practices implemented by data controllers do not comply with the requirements of the GDPR. However, the principle of storage limitation requires that personal data be kept only for a period proportionate to the

purposes pursued. These obligations apply in full to data collected in the context of user accounts, which must be subject to policies for managing inactive accounts and deleting associated data after a defined period of time. At the same time, the collection of data via a guest account does not imply a shorter retention period, as this is linked to the purpose pursued and not to the method of collection.

Furthermore, the existence of a mandatory user account does not in any way deprive data subjects of their rights under the GDPR. When a user no longer wishes to contract with an e-merchant or does not want their data to be retained beyond the execution of their order, they may exercise their right to erasure in accordance with Article 17 of the GDPR and request the deletion of personal data concerning them, including data associated with their user account.

Finally, collecting data via a guest account does not, in itself, provide any greater security guarantees. The coexistence of multiple forms and interfaces dedicated to collecting data and supporting documents must be carefully assessed, as it can increase the complexity of the system and the exposure to risks, particularly in the event of interface hijacking. Conversely, centralizing procedures within a customer account makes it possible to consider implementing enhanced authentication mechanisms (two-factor authentication, passkeys, or equivalent devices).

**In view of all these factors, the risks identified by the EDPB cannot, as such, justify a ban on the use of mandatory user accounts. These risks appear to be more related to possible breaches of the principles of the GDPR than to the principle of requiring a user account. The focus should therefore not be on the existence of the user account as such, but on the effective compliance of the practices implemented by data controllers.**

#### **The need for a case-by-case approach that complies with the GDPR and respects the diversity of e-commerce business models**

- **General remarks**

One of the fundamental principles of the GDPR is the principle of *accountability*, under which it is the responsibility of the data controller to determine the processing operations necessary to achieve a given purpose and the appropriate legal basis, while being able to demonstrate compliance. This principle necessarily involves a **contextualized, case-by-case assessment**, taking into account the specificities of each processing operation, each contractual relationship, and each business model, under the ex post control of the competent data protection authority.

However, the EDPB's draft recommendations deviates from this logic by considering that the requirement to create a user account could only be justified in a very limited number of situations. In practice, this approach leads to a blanket ban on the use of mandatory user accounts and makes guest access mandatory for the entire e-commerce sector, without taking into account the diversity of practices and economic realities.

Such an interpretation does not reflect the reality of e-commerce, which covers a wide variety of forms, media, and business models, ranging from simply browsing a catalog of offers to offering services or subscriptions involving platforms, marketplaces, or group purchasing models. These models differ both in terms of the duration and nature of the contractual relationship and in terms of the legitimate expectations of consumers that arise from them. However, each of these economic and contractual models may have an appropriate legal basis and a different interpretation of the concept of contractual necessity or the necessity of processing in pursuit of a legitimate interest.

In this context, the draft recommendations theoretically limits the situations in which the creation of an account would or would not be justified, and does not allow for an assessment of the relevance of a "guest" experience in relation to the purposes pursued. Furthermore, a general prohibition on services requiring the creation of an account to interact with a website or application and/or make a purchase has no basis in the GDPR, which does not prohibit, in principle, the use of a given legal basis, provided that the criteria it sets out are met.

However, the draft, particularly in sections 3.1 and 3.3, provides an abstract analysis of the condition of "*strict necessity*" without taking sufficient account of the industrial, technical, economic, and organizational constraints specific to operators. Yet the assessment of the necessity of processing requires precisely a case-by-case analysis, taking into account both the purposes pursued and the safeguards implemented by the controller to ensure a high level of protection of personal data.

The sector is therefore expressing serious concerns about recommendations that would lead, even indirectly, to the imposition of a uniform model of contractual relations between seller and buyer, without taking into account the diversity of situations and constraints specific to operators. Such a general and abstract approach would depart from the flexibility intended by the GDPR and the guidelines successively adopted by the G29<sup>2</sup> and then by the EDPB<sup>3</sup>. **Under these circumstances, Fevad calls on the EDPB to review its approach in order to favor a case-by-case analysis, in line with the principle of accountability and capable of taking into account the diversity of economic models.**

- **Specific comments on the legal bases analyzed**

Firstly, we believe that the approach adopted by the EDPB is based on a questionable premise, namely that the creation of a user account should rely on consent rather than on contractual necessity or legitimate interest. However, Article 6 of the GDPR does not impose any hierarchy between the various legal bases it defines. Furthermore, freedom of consent in the highly competitive e-commerce environment cannot be called into question. In the vast majority of cases, a customer who does not wish to create a user account will be able to access a similar offer through other channels, such as a competing e-commerce site, the manufacturer's website, or in-store.

- *The legal basis for the performance of the contract*

With regard to the legal basis for the performance of the contract, the EDPB's analysis appears excessively restrictive in that it is based on a standardized concept of the contract, reduced to the supply of a product or service. However, many business models are based on an overall service experience, including contract relationship management, order management, after-sales service, personalized offers, an optimized browsing experience, etc. Contractual necessity is not a uniform standard applicable to all business models, regardless of the service concerned. It is assessed exclusively in relation to the contract as defined by the professional and accepted by the user. In other words, what is "necessary" depends on the business model and the nature of the services offered. Reducing the e-commerce contract to the mere delivery of a product is to ignore the reality of current offers, in which value often lies in an overall service experience. Consequently, the application of contractual necessity requires a case-by-case analysis, taking into account the diversity of e-commerce models and the services actually provided. Any standardized approach would lead to an extensive interpretation of the

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<sup>2</sup> Opinion 06/2014 of the G29 on the concept of legitimate interest pursued by the data controller within the meaning of Article 7 of Directive 95/46/EC, April 9, 2014, pp. 26-27

<sup>3</sup> Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) of the GDPR in the context of the provision of online services to data subjects, October 8, 2019, point 25.

GDPR and an unjustified challenge to the freedom to conduct a business, guaranteed by Article 16 of the Charter of Fundamental Rights of the European Union.

This analysis is also relevant for integrated or combined offers, which bring together several products and services within an overall experience. Such an offer may combine subscriptions, access to exclusive benefits, conditional purchases, and the sale of regulated products (alcohol, pharmaceuticals, content subject to restrictions for minors). These components form a coherent whole, accessible via a single user account and governed by a unified contract. Imposing systematic segmentation by product or service, distinguishing between guest mode and user accounts, would risk altering this contractual and economic architecture. Such an approach would undermine the freedom to conduct business by forcing professionals to thoroughly review the structure of their offerings.

Each professional must therefore remain free to design their offerings according to the terms they choose: the most common are "*self-service*" offerings, but other professionals are also free to opt for an "*experiential service*" model organized around a customer account. This type of organization makes it possible to optimize the professional's internal organization and cost structure, while offering an optimized catalog and services.

The EDPB's requirement for a "guest mode" therefore constitutes an obstacle to this competitive diversity and to the free determination of offers. The fact that some e-merchants offer purchases without an account cannot impose a standard on players who have built their model on prior membership.

Furthermore, when the EDPB asserts that the criterion of contractual necessity is unlikely to be met, it is addressing an issue that, to a certain extent, goes beyond its sole area of competence. The assessment of the lawfulness of a contractual offer touches on areas such as unfair terms, unfair commercial practices, or the lawfulness of a business model, which fall under legal frameworks other than that of personal data protection.

- *The legal basis for legitimate interest*

The legitimate interest of the data controller may also constitute a fully valid legal basis for justifying the mandatory use of a user account. By almost systematically dismissing it on the grounds that an alternative such as guest mode exists, the EDPB is adopting an excessively restrictive interpretation of Article 6(1)(f) of the GDPR, which weakens its normative scope. Furthermore, by conducting a separate and fragmented analysis of the various purposes served by a customer account (processing orders and returns, handling after-sales service, combating fraud, facilitating repeat purchases, etc.), automatically leads to the exclusion of legitimate interest in the use cases presented, as these do not meet the triple test according to the EDPB's draft. However, as the EDPB points out in paragraph 18 of its draft, the creation of a customer account, whether mandatory or optional, does not in itself constitute a specific purpose. The customer account is a tool that can be used to achieve different purposes in a consistent and inseparable manner. The analysis of these purposes must therefore be carried out on a case-by-case basis by the actors, depending on the use for which the customer account is intended.

Under these circumstances, legitimate interest cannot be assessed in an abstract or presumptive manner. The assessment of the criterion of necessity therefore requires an evaluation of whether the creation of a user account is an appropriate and proportionate means of pursuing the legitimate interest, taking into account, in particular, the economic model chosen, the organization of the service, security requirements, fraud prevention, and service quality.

In this context, it would be useful for the EDPB to expressly specify that the creation of an online user account may, in certain cases, be based on legitimate interest, in particular where justified by a contextual analysis. This could be the case, for example, when an e-commerce site closely combines a variety of product and service offerings, some of which are not suitable for "guest" mode for legal or operational reasons. In this regard, the EDPB recognizes that certain products or services require a user account, such as subscription services or access to exclusive offers. E-commerce businesses offering such combined offers have a legitimate interest in ensuring a consistent and comprehensive customer experience, often made possible by a single account that allows for customer relationship tracking, order tracking, and request management. A systematic separation between offers accessible via an account and those accessible in guest mode could fragment the offer, create confusion for customers, and compromise the transparency of the service. Secondly, the balancing of interests must take into account not only the reasonable expectations of users (which cannot be presumed by either the professional or the authorities: the EDPB considers that a first purchase does not imply a willingness to repurchase, without substantiating this assertion), but also the freedom to do business. Individual consumer preferences, such as the desire not to create an account, cannot systematically take precedence over the economic choices of businesses. In a highly competitive and substitutable B2C e-commerce market, the requirement to have a user account does not deprive consumers of their freedom of choice, as they remain free to enter into a contract or not and to turn to alternative offers.

The recommendations should also recognize that the reasonable expectations of data subjects require an assessment based on facts and evidence. The draft recommendations rightly states in paragraph 54 that the reasonable expectations of customers may vary and that various contextual factors may affect the outcome of this assessment. The EDPB should recognize that if processing is a common practice and that common practice is well understood by consumers, this will make it more likely that they will reasonably expect such processing. As it stands, the wording of the recommendations implies that when processing is a common practice, it will have no impact on the reasonable expectations of data subjects.

- *The legal basis for the legal obligation*

Finally, with regard to the legal basis for the legal obligation, while the EDPB emphasizes that rights can be exercised without a user account, it should be noted that its doctrine, as well as that of the national supervisory authorities, encourages the creation of dedicated spaces for managing preferences and rights in order to ensure their effectiveness online.

Furthermore, by limiting itself to the case of the exercise of individuals' rights under the GDPR, the EDPB does not take into account obligations arising from other regulatory frameworks. For example, European consumer law requires e-merchants to provide an online feature enabling consumers to exercise their right of withdrawal. Similarly, under *the Digital Services Act and the General Product Safety Regulation*, e-merchants are required to inform consumers who have purchased an illegal product in the last six months, as well as those who have purchased a dangerous product, regardless of how long ago.

### **Disproportionate costs in relation to the actual benefit for users**

Finally, Fevad wishes to draw the EDPB's attention to the fact that the obligation to set up a "guest" mode would entail significant costs for e-merchants who have structured their business around user accounts, mobilizing considerable financial, human, and technical resources. For some players, such an obligation would involve a major overhaul of existing purchasing processes and a complete revision of data models, both front-end and back-office, across all

relevant applications. Information systems would therefore have to be redesigned across the board.

These changes would also have a significant impact on customer relationship management and after-sales service, requiring additional human resources. Without user accounts, customers would no longer be able to manage their orders independently or exercise certain rights directly from their customer area.

In an already fragile economic climate, all of these additional investments and costs would be particularly difficult to absorb, especially for microbusinesses and SMEs.

The need to make such investments seems all the more disproportionate given that, when a choice is actually offered, the majority of users opt to create a customer account. Furthermore, as explained above, in practice, the "guest" option does not provide any additional guarantees in terms of personal data protection.

### **Conclusion**

In view of all the above, the mandatory creation of a user account appears above all to be an organizational and operational requirement, compatible with the principles of the GDPR when implemented in accordance with its requirements. The risks identified by the EDPB cannot, as such, justify a blanket ban leading to the introduction of a single model, without taking into account the diversity of e-commerce practices and business models.

FEVAD therefore calls on the EDPB to favor an approach based on effective compliance of practices and a case-by-case analysis of processing, in accordance with the principle of accountability, rather than a normative and abstract approach. This approach would ensure a high level of personal data protection while preserving the flexibility necessary for businesses to operate and remain competitive. It could be accompanied by recommendations on best practices to ensure user account compliance with the GDPR (data minimization, secure account access, deletion procedures, etc.).

Finally, given the significant operational impacts that the widespread use of a "guest" mode would entail, and as indicated above, FEVAD calls on the EDPB to postpone the adoption of the draft recommendations in order to allow for an in-depth and structured dialogue with industry stakeholders, which is essential for a realistic assessment of the practical consequences, costs, and constraints involved.

### **About FEVAD**

*FEVAD is the organization representing the e-commerce and distance selling sector in France. It has 815 members, including online retailers — known as "pure players"— and brick-and-mortar stores with e-commerce sites — known as "retailers" — as well as startups, solution providers, and small digital retailers. In 2025, the online commerce sector in France represented 3.2 billion transactions worth €196.4 billion in revenue, involved more than 42 million online shoppers, and generated more than 200,000 direct jobs.*