



11 February 2026

European Data Protection Board

Submission on Recommendations 2/2025 on the legal basis for requiring the creation of user accounts on e-commerce websites (public consultation).

Requests to clarify that loyalty schemes and online marketplaces may require a mandatory account.

Dear Chair and Members of the Board

1. We welcome the EDPB's draft Recommendations 2/2025 and its focus on strict necessity, data minimisation, and data protection by design and by default in the context of mandatory customer accounts.
2. We respectfully submit that the final text should be amended to clarify that, in clearly defined circumstances, loyalty schemes that allow members to collect and redeem points may lawfully require a mandatory member account under Article 6(1)(b) GDPR because the account is strictly necessary to perform the loyalty contract.
3. In addition, we propose clarifying that multi-merchant online marketplaces may, in clearly defined circumstances, require a mandatory customer account under Article 6(1)(b) GDPR where the account is strictly necessary to perform the marketplace contract and ensure safe and efficient transactions across multiple sellers.

About TUI Group

4. The TUI Group is a leading global tourism group. The Group is headquartered in Germany. TUI shares are listed on the MDAX index of the Frankfurt Stock Exchange and on the regulated market of the Lower Saxony Stock Exchange in Hanover.
5. The TUI Group offers its more than 34.7 million customers integrated services from a single source and covers the entire tourism value chain under one roof. The Group owns more than 460 hotels and resorts with premium brands such as RIU, TUI Blue, and Robinson, as well as 18 cruise ships, ranging from the luxury class MS Europa and MS Europa 2 and the HANSEATIC class expedition ships to the Mein Schiff fleet of TUI Cruises and cruise ships at Marella Cruises in the UK.
6. The TUI Group also includes leading European tour operator brands and online marketing platforms, for example for hotel-only or flight-only offers, five airlines with more than 130 modern medium- and long-haul aircraft, and around 1,200 travel

agencies. In addition to expanding its core business with hotels and cruises through successful joint ventures and activities in holiday destinations, TUI is increasingly focusing on the expansion of digital platforms. The Group is transforming itself into a global tourism platform company.

7. Global responsibility for sustainable economic, environmental, and social action is at the heart of our corporate culture. The TUI Care Foundation, initiated by TUI, focuses on the positive effects of tourism, education and training, and the strengthening of environmental and social standards with projects in 25 countries. In this way, it supports the development of holiday destinations. The globally active TUI Care Foundation initiates projects that create new opportunities for the next generation.

Benefits of mandatory accounts

8. Mandatory customer accounts offer several benefits, particularly in the context of e-commerce and data protection. Here are some key points.
 - a) **Improved customer experience:** By requiring users to create accounts, businesses can offer personalized content and services, enhancing the overall shopping experience.
 - b) **Enhanced security:** Accounts often require authentication, which can help prevent unauthorized access and reduce the risk of data breaches.
 - c) **Facilitate data subject rights:** Accounts play a significant role in facilitating data subjects' rights by providing customers with a platform to access, manage, and control their personal data, including managing their preferences in relation to personalized marketing.
 - d) **Process simplification:** Accounts can streamline the process of making purchases and managing subscriptions, making it easier for customers to complete transactions.
 - e) **Fraud prevention:** By requiring accounts, businesses can better monitor and prevent fraudulent activities, protecting both customers and the business.

Summary of request

9. We request that the EDPB explicitly recognise loyalty schemes with balance-bearing benefits (e.g., points or credits that accrue and are redeemable over time) as a use case where a mandatory account may be strictly necessary for the performance of the loyalty contract, akin to the draft's treatment of bona fide subscriptions and access to a closed community, subject to robust safeguards. This clarification is

consistent with the draft's strict-necessity analysis and with its acknowledgement that the listed justifications are limited but non-exhaustive.

10. We further request that the EDPB clarify that multi-merchant online marketplaces may, in defined circumstances, require a mandatory customer account where such an account is strictly necessary to perform the marketplace contract, including unified order management, standardised buyer-seller communications, coordinated returns handling, and the exercise of statutory warranty and guarantee rights across multiple sellers.

Supporting reasons grounded in the draft Recommendations

11. First, the draft reflects a clear standard: Article 6(1)(b) must be interpreted strictly; controllers must show that the "main subject-matter" of the specific contract cannot be performed without the specific processing and that no less intrusive alternative exists. Where recurrent authenticated interactions are intrinsic to the service's delivery, a compulsory account may be strictly necessary for the duration of a valid, long-term contract.
12. Second, the draft recognises that some contracts require ongoing, repeated authentication to deliver core features. For subscriptions, the draft explains that accounts can be necessary to access subscribed content, follow ongoing activity, communicate securely, and check or change status; these are identified as features tied to the core performance of the contract. Loyalty schemes with balance-bearing benefits share these characteristics: the essence of the loyalty contract is a persistent, member-specific balance and lifecycle of accrual and redemption that cannot be performed without reliably identifying the member across transactions and time.
13. Third, the draft acknowledges "closed community" membership as another situation where the account can be necessary for contract performance when membership in a restricted community is the main subject-matter. Many loyalty programmes constitute a defined membership community with eligibility criteria and ongoing participation rules; when participation in the programme - not mere access to public retail offers - is the core subject-matter, the account is necessary to confer and manage member-only benefits.
14. Fourth, while the draft (rightly) cautions that "building customer loyalty" rarely justifies mandatory accounts under Article 6(1)(f), its analysis targets discretionary loyalty-building and personalisation, not performance of a separate loyalty contract whose main subject-matter is the management of a member's balance of points/credits. In other words, the draft draws a line between optional marketing/personalisation aims (generally unsuitable for mandatory accounts) and contract performance where strict necessity can be met. Clarifying that a points-

based loyalty contract falls in the latter category ensures alignment with the draft's legal-basis framework.

15. Fifth, the draft emphasises that its permitted categories are “very limited - though non-exhaustive.” Adding a tailored loyalty-scheme example would faithfully implement this formulation while preventing misinterpretation that all loyalty programmes are relegated to voluntary accounts only, even when the contract's performance intrinsically requires persistent, authenticated account functionality.

The strict-necessity case for points-based loyalty schemes

16. A points-based loyalty scheme is a distinct, optional contract whose main subject-matter is the accrual, storage, and redemption of member-specific value over time. Delivering this subject-matter requires the controller to:
 17. Reliably identify and authenticate the same member over multiple transactions to credit accruals to the correct balance, prevent double-spending, and execute redemptions against that balance. This mirrors the draft's subscription analysis that recurrent authenticated interactions throughout the contract are necessary for performance.
 18. Maintain accurate, member-specific records of transactions (accruals/redemptions), applicable tiers, and benefit status so that members can “check or change the status” of their benefits - a function the draft recognises as intrinsic in subscription contexts and equally intrinsic here.
 19. Provide a secure, member-specific environment to communicate programme-critical information, resolve disputes, and deliver member-only offers; where the “membership” is the contract's core, the draft accepts account necessity for performance.
 20. By contrast, mechanisms proposed elsewhere in the draft for one-off tasks (e.g., one-time links or ad hoc forms) are not workable, equally effective alternatives for a persistent balance that must be correctly maintained across time, channels, and devices. The strict-necessity and “no less intrusive equally effective means” tests are therefore satisfied for the loyalty contract, while remaining inapplicable to ordinary retail purchases outside the programme.

The strict-necessity case for multi-merchant online marketplaces

21. Multi-merchant online marketplaces are distinct, optional contracts in which the platform operator intermediates purchases between buyers and multiple third-party sellers (and, in hybrid models, the operator itself). The core subject-matter includes unified order placement and fulfilment coordination, standardised communication

channels, dispute resolution, returns logistics, and the exercise of statutory warranty and guarantee rights across different merchants. Delivering these features reliably over time often requires a persistent, authenticated customer account that enables end-to-end identification and coordination across transactions and sellers.

22. A centrally organised marketplace on which both the operator itself and external vendors sell goods cannot be implemented efficiently without a unified customer account. Registration enables, among other things, standardised communication with customers, the processing of returns, and the exercise of guarantee and warranty rights. A centralised account structure is also necessary for managing the large number of participating merchants.
23. As with subscriptions, recurrent authenticated interactions are inherent to marketplace participation: buyers must access consolidated order histories and messages, initiate and track returns with different sellers, and manage warranties and guarantees that may arise months after purchase. The account is therefore necessary to perform the marketplace contract's main subject-matter, and there is typically no equally effective, less intrusive alternative that can maintain integrity and security across multiple sellers and transactions. Where the platform operates a hybrid model, the same account enables consistent treatment of purchases from the operator and third-party sellers, ensuring transparency, safety, and accountability.

Safeguards to ensure alignment with the draft's risk-based approach

24. To preserve the draft's privacy-protective posture, any recognition of this use case should be conditioned on safeguards emphasised in the draft:
 - a) The mandatory account relates only to the loyalty contract.
 - b) Processing within the loyalty account is limited to what is strictly necessary to perform the loyalty contract (e.g., member identifiers, balance, accrual/redemption history, tier status), with retention linked to programme participation and subject to storage limitation, reflecting the draft's emphasis on data minimisation and storage practices.
 - c) Any additional purposes (e.g., profiling for personalised offers) rely on an appropriate separate legal basis, where required by the GDPR and e-Privacy Directive and must be clearly separated from the core loyalty performance.
 - d) Transparency obligations should explain the distinct purposes, retention periods, and rights for loyalty-account processing, consistent with the draft's guidance on designing choice architectures and disclosures.

Proposed drafting suggestions

25. We propose the following focused edits to Section 3.1 (Article 6(1)(b)).

26. Add a new subsection after 3.1.2 Subscriptions:

“3.1.x Points-based loyalty schemes. In loyalty programmes under a separate contractual membership where members accrue and redeem programme benefits (e.g., points, credits, or tiers) over time, the processing involved in the creation and management of a member account may be necessary for the performance of that contract within the meaning of Article 6(1)(b) GDPR. In such cases, the performance of the loyalty contract requires recurrent authenticated interactions throughout the duration of the contract to reliably attribute accruals, maintain the member’s balance and tier status, and execute redemptions. Controllers may only rely on this legal basis for the duration of the membership and subject to strict data minimisation. Additional processing for marketing or personalisation requires an appropriate separate legal basis.”

27. Add a new subsection after 3.1.x Points-based loyalty schemes:

“3.1.y Multi-merchant online marketplaces. In online marketplaces where a platform intermediates transactions between buyers and multiple third-party sellers (including hybrid models in which the operator also sells goods), the processing involved in the creation and management of a customer account may be necessary for the performance of the marketplace contract within the meaning of Article 6(1)(b) GDPR. The performance of the marketplace contract inherently requires recurrent authenticated interactions to coordinate orders, standardise buyer-seller communications, manage returns and refunds, and enable the exercise of statutory warranty and guarantee rights across multiple sellers. Controllers may rely on this legal basis only for processing that is strictly necessary for these purposes and subject to data minimisation and storage limitation. Additional processing for marketing or personalisation requires an appropriate separate legal basis.”

28. Clarify in 3.3.2 “Building customer loyalty” that the conclusion against mandatory accounts does not apply where the loyalty programme itself is the main subject-matter of a separate contract requiring persistent balance administration: “The present analysis concerns discretionary loyalty-building and personalisation. It does not preclude reliance on Article 6(1)(b) GDPR where the main subject-matter is the performance of a loyalty contract involving accrual and redemption of member-specific benefits, provided the strict necessity test is met.”

29. Finally, we note the draft’s express statement that permissible scenarios are limited but non-exhaustive, which supports inclusion of these defined use cases.

30. We appreciate the opportunity to comment and would welcome further engagement to assist in calibrating the final text.

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