



EDPB

## Public Consultation - Guidelines 1/2024 Article 6(1)f GDPR

2024-10-28

Dear Sir or Madam,

Thank you for your commitment and the clarifications regarding the legitimate interest!

While reading the Guidelines 1/2024 I found two sections where I would like to suggest a revision:

- **Paragraph 12:** It is said, *the assessment should be made at the outset of the processing, with the involvement of the Data Protection Officer (DPO) (if designated)*. A footnote refers to Article 38(1) GDPR.

My understanding of Article 38 was so far, that the DPO shall be involved in all *important* changes / developments at an early stage, but not to deal with the legal basis of virtually *all* processing activity which arise within his or her organization.

- In case this is your opinion too, you may change the wording here as otherwise it could be read as the *DPO shall be engaged with almost every balancing* which has to be done by the organization.
  - In case you would like actually express that a DPO should be engaged with almost all balancing procedures I may argue that this approach would turn a DPO into a bottle neck. The DPO would become part of the daily work, a Data Protection Management Team (or even better the relevant department) is supposed to do. If this would be the case, the DPO would not be any longer the one who could supervise if the organization is carrying out adequate balancing procedures before a processing takes place based on Article 6 (1) f - because he or she would be part of it. We would run into a conflict of interests.
- **Example 3:** Your guidelines are extensively - for a good reason. Some practitioners within the corporate world may just read the examples, which are very helpful to get a quick overview,



which is often needed as time is scarce.

However, Example 3 could be understood as kind of strict, not allowing *any* use of customer data for future sales initiatives.

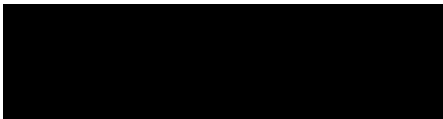
Even a loyal customer who bought items on several occasions is legally no customer any more at the moment the last purchase was delivered and paid. At a later point within the guideline you explain (at least I understood it this way) that such (former) customers may be contacted to offer them the same service or even complementary goods or services even weeks or month the former deal was closed - all based on legitimate interest. Surly, the period between the last 'done deal' and the sales approach shall not be too lengthy, while the extend of that period probably shall depend on the type of goods or services being subject of the relationship.

Maybe I am wrong with my judgment about post sales activities. But I am not the only one (it seems to be common practice doing such post sales activities based on a legitimate interest), and personally I feel fine being contacted as a data subject by vendors at a later time as long this is not too intrusive (well balanced) and I can object effectively and in a simple way.

As said above. Your Example 3 reads differently. Being contacted / informed about a new but similar publications may be seen as OK by data subjects since it is as being offered a (new) complementary good from a (trusted) vendor at a later time. This complementary product or service may has not existed at the moment the vendor decided to use my address for sales activities at a later time not specified at the moment the data was kept (of course, the customer shall be informed, that his contact details will kept for later sales activities within the Article 13/14 info).

Again, thanks for publishing these guidelines and other documents you are have been working on. They help a lot to better understand and apply the GDPR (or in my case, to help advising my customers to do so). I hope, my small suggestions are useful for your work.

Best Regards



Joerg Weiß