EDPB Report on Public Consultation: Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR

1. Background on the process of the public consultation

This public consultation concerned the EDPB Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR. The consultation was carried out as an open written consultation hosted on the EDPB website and targeted all interested stakeholders, including industry actors, civil society, academics and individual citizens.

It was held from 9 October 2024 to 20 November 2024, after the first version of the guidelines was adopted on 8 October 2024. The main objectives of the consultation were to gather feedback on the clarity, comprehensibility and useability of the guidelines for stakeholders, and to identify specific questions and passages of the guidelines which could cause difficulties for stakeholders.

2. Amount and nature of contributions received

Total number of contributions received: 80

Link to the page where the contributions are published: https://www.edpb.europa.eu/public-consultations/guidelines-12024-on-processing-of-personal-data-based-on-article-61f-gdpr_en?page=0

Number of contributing entities by category:

Business association	Company	Individual	NGO	DPO / Professional Association	Consumer organisation	Academic / Research Institution
31	22	10	6	5	1	5

Total number of contributions received from EU/EEA and third countries:

EU/EEA	Third countries
Austria: 1	United Kingdom: 2
Belgium: 18	China: 2
Czech Republic: 1	Turkey: 1
Finland: 1	New Zealand: 1
France: 5	
Germany: 18	
Hungary: 3	
Ireland: 4	
Italy: 3	
Luxembourg: 1	
Netherlands: 5	
Norway: 1	
Poland: 6	
Romania: 1	
Slovakia: 1	
Spain: 3	
Sweden: 2	
TOTAL: 74	**TOTAL: 6**

3. Main outcomes of the public consultation

The contributions received covered a wide range of legal and operational issues. The public consultation enabled the clarification of several uncertainties or inaccuracies, and informed the introduction of additional wording to address several questions raised in the contributions.

Overall, the feedback was very detailed and diversified, covering many different parts of the guidelines. Still, a number of **recurring themes** could be identified:

- Requests to address specific sectors or specific processing activities (e.g. the creditworthiness, finance and banking, media or telecommunications sector; e.g. processing relating to AI, to video surveillance and access control, to customer acquisition or to anonymisation)
- Call for more positive examples, often linked to the request to specifically "allowlist" or approve a given processing activity entirely
- Request for extensive methodology or actionable toolboxes, while on the other hand requesting considerable flexibility for controllers, e.g. on the selection of legal bases, of processing purpose, of processing methods, of "reasonable less intrusive alternatives", on the granularity of when and how to perform and document the legitimate interest assessment)
- Perception of a (too) restrictive approach of the guidelines on the use of Art. 6(1)(f) GDPR by controllers, including going beyond GDPR requirements, interpreting CJEU case-law too broadly beyond the specific case at hand, and lack of taking positive aspects for controllers in the legitimate interest assessment into account
- The role of the DPO in the legitimate interest assessment
- The notion of "mitigating measures"
- Providing data subjects with information from the balancing test

The **main positive responses** from the public consultation

- raised helpful questions not (sufficiently) addressed in the first version of the guidelines
- provided useful pointers to terminological ambiguities or misleading phrasing
- requested additional examples, guidance on specific sectors or processing activities, and extensive methodology and actionable toolboxes

Among these positive contributions, the EDPB has incorporated those relating to additional questions (insofar as within the scope of the guidelines) and clarifications on terminology or misleading phrasing, while other proposals, such as the request for guidance on specific sectors or extensive methodology, were not taken on board as they fall outside the scope of the guidelines.

As indicated above, **several critical observations** were received from the public consultation, most of which referred to a perceived (too) restrictive approach of the guidelines in several aspects.

Many of these observations were based on misunderstandings of the GDPR or misunderstandings or misrepresentations of the guidelines, and have therefore not led to significant changes. Where appropriate, though, clarifications and further text have been added to the guidelines.

Having considered the feedback received, the **EDPB has incorporated the following elements** into the guidelines:

Introduction and introductory remarks

- Clarification on the relationship between Opinion 06/2014 of the Art. 29 Data Protection Working Party and the present guidelines (para. 5)
- Addition on the notion of "processing" (Art. 4(2) GDPR), and merging wording of former para. 10, to further clarify when a (separate) legitimate interest assessment is required (para. 7)

- Clarification on the need to pass both the necessity and the balancing test (para. 12)
- Clarified wording on the involvement of the DPO (para. 12)

1st step: Pursuit of a legitimate interest by the controller or by a third party

- Clarifications regarding the criteria for a relevant interest under Art. 6(1)(f) GDPR, in particular the "present and effective" criteria, also bringing it more in line with concrete CJEU case-law; while maintaining the position that all three criteria are to be met in order to pass the first step of the legitimate interest test (para. 16)
- Addition of a paragraph on the "weight" of the legitimate interest to be taken into account in the balancing test (para. 18, referenced in para. 30 and para. 52)
- Addition of a reference to Art. 4(10) GDPR to clarify who can (and cannot) be a "third party" within the meaning of Art. 6(1)(f) GDPR (para. 20)
- Clarification that Art. 6(1)(f) GDPR in itself does not set out an obligation for the controller to engage in processing in pursuit of the interests of a third party (para. 20)
- Clarification that acting in an interest corresponding or coinciding with the interest of a wider community may give more "weight" in the balancing test (para. 22)

2nd step: Analysis of the necessity of the processing to pursue the legitimate interests

- Clarification that the necessity test for the processing in the context of the pursuit of a third party's legitimate interest follows the same criteria which apply to the controller's own interest, including clarification on the practical difficulties controllers might face when assessing this criterion with regard to a third party's legitimate interest (para. 27)

3rd step: Methodology for the balancing test

- Given more prominence to the fact that the balancing test should take into account the various ways in which individuals can be affected by the processing – including possible positive effects of such processing (para. 30, 35)
- Clarification on how controllers might need to take into account decisions or actions by third parties when performing the balancing test (para. 41)
- Clarifications on the notion of "broader emotional impacts" used in the first version of the guidelines (para. 42, 43)
- Clarified the relationship between the assessment of the impact of the processing on the data subjects in the balancing test and the requirement to perform a DPIA in accordance with Art. 35 GDPR (para. 46)
- Addition to clarify that when assessing data subjects' reasonable expectations, controllers should also consider what can justifiably be expected in a given context (and not only what is common in a given sector) (para. 49)
- Clarifications regarding the possible influence of contractual provisions on the data subjects' reasonable expectations (para. 51)
- Additions and clarifications on "mitigating measures", in particular (1) clarifying that any measures limiting the impact of the processing on the data subject should be taken into account in the balancing test, whether legally required to ensure compliance with the GDPR or going beyond that, (2) adding more detailed examples on mitigating measures controllers might consider implementing, and (3) clarifying that the controller should be able to demonstrate how taking such measures changes the outcome of the balancing test (paras. 52-56)

Transparency

- Clarified that it is advisable as a matter of best practice that data subjects can obtain information on the balancing test from the controller upon request (para. 66)

Right to object

- Clarified that an objection only concerns the relevant personal data concerning the objecting data subject (para. 71)
- In relation to "compelling" grounds for the controller, removed the reference to "essential to the controller", stemming from a slightly different context (Art. 49 GDPR) (para. 72)

Right to erasure

- Clarifications regarding the connection between the right to object and a related erasure request, as well as adding a reference to the exceptions to the right to erasure listed in Art. 17(3) GDPR (para. 75, 77)

Automated individual decision-making

- Addition to (further) clarify that the guidelines do not exclude ADM based on legal provisions, but that Art. 6(1)(f) GDPR, in itself, is not considered Union law authorising ADM within the meaning of Art. 22(2)(b) GDPR (para. 80)

Contextual application

- Addition of a paragraph to point to the EDPB Opinion 28/2024 on AI models, adopted after the public consultation on the present guidelines had ended, to address contributions requesting further details on the application of Art. 6(1)(f) GDPR in the context of AI (para. 90)

Processing for the purposes of preventing fraud

- Added and updated wording to take into account the relevance of fraud prevention as a legitimate interest of the controller and its possible relevance for the interests of a wider community, while also clarifying on the potentially significant impacts on data subjects, thereby providing more details on the balancing test (paras. 100, 102, 104)
- Removed the reference to "fraud detection" which was considered unclear by contributions (para. 102)
- Clarifications on the need to be specific about the type of fraud to be prevented, with regard to the clear articulation of the legitimate interest at stake, the capability to conduct the necessity test, as well as the principles of data minimisation, purpose limitation, transparency and documentation (paras. 103, 105)

Processing for direct marketing purposes

- Updates on the notion of direct marketing under GDPR (in particular on personalised advertising and communications by non-commercial organisations) (para. 109)
- Slightly updated the wording to (further) clarify that the EDPB does not exclude certain direct marketing activities from Art. 6(1)(f) GDPR in its entirety, while maintaining the position that certain (intrusive) processing activities will be harder to justify under Art. 6(1)(f) GDPR than less intrusive activities (para. 119)

Processing for internal administrative purposes within a group of undertakings

- Added wording to take into account the possible (positive) relevance of processing in this context for data subjects, and added another positive example (para. 122)
- Removed the last sentence of para. 122 which seemed to cause confusion for readers

Transmission of personal data to competent authorities

- Clarified in example 8 that well substantiated assumptions of voluntary misuse or criminal behaviour can influence the balancing exercise concerning the transmission

Further, the **EDPB has not incorporated the following elements** into the guidelines:

- Contributions which were outside of scope of the guidelines were not taken on board. This primarily included contributions which addressed:
    - Requests to address specific sectors or specific processing activities (e.g. the creditworthiness, finance and banking, media or telecommunications sector; e.g. processing relating to AI, to video surveillance and access control, to customer acquisition or to anonymisation, to specific forms of (direct) marketing): The guidelines should provide general guidance on the use of Art. 6(1)(f) GDPR as a legal basis. The "contextual applications" mentioned in the guidelines are those expressly referred to in the GDPR. It is not within the scope of the guidelines to exhaustively assess the use of Art. 6(1)(f) GDPR in specific sectors or for specific processing activities. This can be subject to specific guidance of the EDPB, to which – where appropriate – references have been added in the revised version of the present guidelines.
    - Call for more positive examples, often linked to the request to specifically "allowlist" a given processing activity entirely: In addition to the positive practical references and examples already contained in the initial version of the guidelines (e.g. on which interests could be considered "legitimate", cf. para. 15; on third-party interest pursuit cf. example 4; on compelling legitimate grounds, cf. para. 72, on fraud prevention, cf. para. 104, on direct marketing, cf. para. 119, on processing for internal administrative purposes, cf. example 7, or transmission to competent authorities, cf. example 8), several more have been added after public consultation (e.g. on additional mitigating measures, cf. new para. 54, on AI, cf. new para. 90, on fraud prevention, cf. footnote 158, on internal administrative processing, cf. para. 122). However, given the open-ended nature of Art. 6(1)(f) GDPR and the relevance of the specific circumstances of the processing, and measures (not) implemented, an "allowlisting" of certain processing activities is not within the scope of these general guidelines.
    - Request for extensive methodology or actionable toolboxes: Most of the subjects on which extensive methodology or actionable toolboxes were requested are outside of the scope of the guidelines, in particular because they would not be specific to Art. 6(1)(f) GDPR, but also concern other legal bases (e.g. selection of legal bases, of processing purposes, on the necessity test or the documentation requirement). In addition, while several contributions asked for extensive and exhaustive guidance and actionable toolboxes, several other

contributions highlighted the need for flexibility for controllers depending on the concrete processing situation at hand.
    - Requests to provide in-depth guidance on the interplay between Art. 6(1) GDPR, in particular Art. 6(1)(f) GDPR, and other legal regimes, such as the ePrivacy Directive or other (national) legislation: Where appropriate, clarifications have been included in the revised version. However, these guidelines focus on Art. 6(1)(f) GDPR, and aren't meant to be interplay guidelines.
    - Requests to provide extensive guidance on certain data subjects' rights, such as the right to object: The purpose of the guidelines is to provide clarity on certain aspects of specific data subjects' rights in relation to Art. 6(1)(f) GDPR, but not to provide exhaustive and conclusive guidance those data subjects rights. These are to be addressed in (future) separate EDPB guidance documents.

- Contributions which related to matters which are not within the remit of the EDPB were not taken on board. This primarily included contributions which referred to required legislative changes to the GDPR or the e-Privacy Directive.

- Contributions which misinterpreted the content of the guidelines or which were based on misunderstandings of the GDPR were not taken on board. The main misinterpretations concerned the perception of a (too) restrictive approach of the guidelines on the use of Art. 6(1)(f) GDPR as a legal basis. Instead, where appropriate, clarifications were added in the revised version of the guidelines. In particular:
    - The guidelines do recognise the principle of proportionality, in particular with regard to the necessity test, as they precisely refer to "*reasonable*, just as effective, but less intrusive alternatives". This, as well as the notion of "strict" necessity, is also in line with CJEU case-law.
    - The guidelines do not interpret CJEU case-law, in particular the Bundeskartellamt case, too broadly. The guidelines primarily cite the court's general statements on Art. 6(1)(f) GDPR, which apply independently of the specific case at hand (and which have been referenced in later CJEU judgments as well). Where the guidelines cite the court's statements referring to the specific case at hand (e.g. in certain examples), these references are aligned with the concrete circumstances of the case at hand.
    - The guidelines do not entirely exclude processing based on Art. 6(1)(f) GDPR, in particular in a commercial interest, when related to children as data subjects, but highlight the special protection that needs to be afforded to children. The processing of children's personal data will be subject to separate EDPB guidance in more detail.
    - The guidelines do not overly restrict processing based on Art. 6(1)(f) GDPR for the purpose of ensuring network and information security, but merely highlight that all three steps of the legitimate interest assessment must be completed, and raise awareness of certain factors that may have an impact on the outcome of these tests.

- Contributions for which, after consideration, the EDPB decided to take another position were not taken on board. This in particular includes contributions which addressed the influence of the information provided to data subjects on their reasonable expectations (para. 50). The EDPB maintains the position that while informing the data subject of the processing is important, it is not the only decisive element in shaping the reasonable expectations of data subjects (cf. also the clarifications added in para. 49 on what can *justifiably* be expected). On the other hand, the guidelines do not negate that the information provided to data subjects can have some influence on the reasonable expectations.

Furthermore, **in addition** and independently to the amendments and clarifications resulting from the feedback received in the public consultation, **the EDPB has incorporated**

- A number of editorial and formatting updates to improve readability and/or ensure formal consistency with recently updated EDPB drafting best practices (this includes e.g. the removal of disclaimers at the end of practical examples, while adding an explanatory footnote at the end of the first example).
- A flowchart as an annex to the guidelines, summarising the reasoning to be followed when applying the three steps legitimate interest assessment.
- Recent CJEU decisions rendered after adoption of the first version of the guidelines, in particular CJEU, judgment of 9 January 2025, Case C-394/23, *Mousse v. CNIL, SNCF Connect*; CJEU, judgment of 13 March 2025, Case C-247/23, *Deldits*; CJEU, judgment of 13 November 2025, Case C-654/23, *Inteligo Media;* CJEU, judgment of 18 June 2026, Case C-484/24, *NTH Haustechnik*.
- References to documents adopted by the EDPB after adoption of the first version of the present guidelines, e.g. EDPB Guidelines 03/2026 on web scraping in the context of generative AI (cf. footnote 137); EDPB Guidelines 02/2026 on Anonymisation and EDPB Guidelines 01/2025 on Pseudonymisation (cf. footnote 72); EDPB Guidelines 1/2026 on processing of personal data for scientific research (cf. footnote 44); EDPB Guidelines 02/2024 on Art. 48 GDPR (cf. footnote 202); EDPB Opinion 28/2024 on certain data protection aspects related to the processing of personal data in the context of AI models (in particular para. 90);
- A link to the SPE OSS Case digest on Art. 6(1)(f) GDPR, commissioned by the EDPB after the adoption of the first version of the guidelines, for further reference (cf. footnote 3).