

# Guidelines



## **Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects**

**Version 2.0**

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## Version history

Version 2.0	8 October 2019	Adoption of the Guidelines after public consultation
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1	Part 1 – Introduction .....	4
1.1	Background.....	4
1.2	Scope of these guidelines.....	5
2	Part 2 - Analysis of Article 6(1)(b).....	5
2.1	General observations .....	5
2.2	Interaction of Article 6(1)(b) with other lawful bases for processing .....	7
2.3	Scope of Article 6(1)(b).....	8
2.4	Necessity .....	8
2.5	Necessary for performance of a contract with the data subject .....	9
2.6	Termination of contract .....	12
2.7	Necessary for taking steps prior to entering into a contract .....	13
3	Part 3 – Applicability of Article 6(1)(b) in specific situations.....	14
3.1	Processing for ‘service improvement’ .....	14
3.2	Processing for ‘fraud prevention’ .....	14
3.3	Processing for online behavioural advertising .....	14
3.4	Processing for personalisation of content.....	15

# The European Data Protection Board

Having regard to Article 70(1)e of Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC,

## HAS ADOPTED THE FOLLOWING GUIDELINES

### 1 PART 1 – INTRODUCTION

#### 1.1 Background

1. Pursuant to Article 8 of the Charter of Fundamental Rights of the European Union, personal data must be processed fairly for specified purposes and on the basis of a legitimate basis laid down by law. In this regard, Article 6(1) of the General Data Protection Regulation<sup>1</sup> (GDPR) specifies that processing shall be lawful only on the basis of one of six specified conditions set out in Article 6(1)(a) to (f). Identifying the appropriate legal basis that corresponds to the objective and essence of the processing is of essential importance. Controllers must, *inter alia*, take into account the impact on data subjects' rights when identifying the appropriate lawful basis in order to respect the principle of fairness.
2. Article 6(1)(b) GDPR provides a lawful basis for the processing of personal data to the extent that "processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract".<sup>2</sup> This supports the freedom to conduct a business, which is guaranteed by Article 16 of the Charter, and reflects the fact that sometimes the contractual obligations towards the data subject cannot be performed without the data subject providing certain personal data. If the specific processing is part and parcel of delivery of the requested service, it is in the interests of both parties to process that data, as otherwise the service could not be provided and the contract could not be performed. However, the ability to rely on this or one of the other legal bases mentioned in Article 6(1) does not exempt the controller from compliance with the other requirements of the GDPR.
3. Articles 56 and 57 of the Treaty on the Functioning of the European Union define and regulate the freedom to provide services within the European Union. Specific EU legislative measures have been adopted in respect of 'information society services'.<sup>3</sup> These services are defined as "any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services." This definition extends to services that are not paid for directly by the persons who receive them,<sup>4</sup> such as online services funded through advertising. 'Online services' as used in these guidelines refers to 'information society services'.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>2</sup> See also recital 44.

<sup>3</sup> See for example Directive (EU) 2015/1535 of the European Parliament and of the Council, and Article 8 GDPR.

<sup>4</sup> See Recital 18 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.