



Die Wirtschaftsauskunfteien e.V.

Die Wirtschaftsauskunfteien e. V.
Geschäftsleitung
Nikolaus von der Decken

Die Wirtschaftsauskunfteien e.V. - Kormoranweg 5 - 65201 Wiesbaden

Kormoranweg 5
65201 Wiesbaden

Telefon 0611 9278 320

Geschäftsleitung@die-wirtschaftsauskunfteien.de
www.die-wirtschaftsauskunfteien.de

19th November 2024

DW Response to EDPB Guideline on Legitimate Interest

The **Verband der Wirtschaftsauskunfteien e.V.** ('DW') is the German industry association for companies that provide business information and credit reports. Our association represents the interests of credit agencies that collect and analyse relevant information about natural and legal persons and make it available to their business partners. The association is committed to promoting the responsible handling of such information and compliance with data protection standards. It also offers its members a platform for exchanging information on current developments and legal framework conditions in the field of business information. DW is an important point of contact for politicians, businesses and consumers on issues relating to creditworthiness and fraud prevention.

DIE WIRTSCHAFTSAUSKUNFTEIEN (DW) welcomes the opportunity to comment on the European Data Protection Board's (EDPB) guidelines on legitimate interest as a legal basis for processing personal data. We agree and support the positions presented by ACCIS (ACCIS Position Paper on EDPB Guidelines on Legitimate Interest) and FEBIS (FEBIS Comments on EDPB Guidelines on Legitimate Interest). In alignment with these positions, we would like to emphasize the following key aspects, which are essential to ensuring the balanced application of the GDPR and maintaining a fair and effective data protection framework:

1. **Equal Standing of Legal Bases (see also Paragraph 1 ACCIS / Page 1 FEBIS)**

We strongly support the principle that all legal bases provided under Article 6(1) GDPR are equally valid and must be applied according to their respective criteria and contexts. Legitimate interest, as an essential legal basis, should not be unduly restricted or deprioritized in comparison to other grounds, such as consent or contractual

necessity. A balanced and flexible interpretation is necessary to support innovation, economic activity, and effective service provision while respecting fundamental rights.

2. Right to Object (see also Paragraph 5 ACCIS)

The legitimate interests of credit agencies and their contractual partners are critical to ensuring trust and security in financial transactions and broader economic activities. These entities perform essential functions, such as credit risk assessment and fraud prevention, which rely on the responsible processing of personal data. The guidelines should explicitly recognize these compelling interests and provide clarity on how they can be appropriately balanced with data subjects' rights. Such recognition is vital to maintaining the functionality of credit systems and protecting consumers from financial harm.

In line with the general comments from ACCIS and FEBIS, the guidelines should acknowledge that providers of credit information services have compelling and overriding legitimate grounds to maintain their databases as updated, accurate, and complete. It is crucial to clarify that the right to object under Article 21(1) GDPR is not absolute and must be based on a *specific and exceptional personal situation* invoked by the data subject. Otherwise, data subjects might too easily manipulate their credit information by objecting to this data being kept in our databases without sufficient reason. In any case, already today, *DW members delete data if the data subjects provide a specific and legitimate justification that demonstrates how their particular situation outweighs the compelling legitimate interests of credit reporting agencies and their affiliated companies in line with Article 21 (1) GDPR.*

3. The question of sole traders acting in their business capacity (see also Page 5 FEBIS)

GDPR does not explicitly mention sole trader's data being established as a legal person but some interpretation from the EDPB and some DPAs consider sole traders' data as personal data. This opposes to general EU Consumer law which defines a consumer as "*a natural person who is acting for purposes other than his or her trade, business or profession;*" and therefore someone who is acting for purposes which belong to his trade, business or profession should not be seen as a consumer but as a business.

DW would strongly recommend a clarification based on the capacity under which a natural person interacts and to consider that natural persons acting in business capacity should be considered insofar equal to legal persons in all relevant legislation (they would

still be treated as private persons where NOT acting in business capacity). It is the capacity in which an individual interacts which should be considered i.e. private for private capacity, and available for re-use for legitimate purposes for business capacity.

We urge the EDPB to carefully consider these points in the finalization of the guidelines to avoid unintended restrictions on legitimate processing activities. A balanced and pragmatic approach is essential to uphold both data protection principles and the operational needs of businesses and organizations across Europe.

DIE WIRTSCHAFTSAUSKUNFTEIEN remains committed to work with the Data Protection Authorities and other stakeholders to ensure a data protection framework that serves individuals, businesses, and society as a whole.

Die Wirtschaftsauskunfteien e. V.

Nikolaus von der Decken
General Manager