



FEDMA input on consultation on the EDPB guideline 1/2020 on processing personal data in the context of connected vehicles and mobility related applications

Legitimate interest (LI) is a longstanding concept allowed for by the GDPR that reconciles the needs of the data marketing industry with the legitimate interests of consumers.

- GDPR aims to **balance data protection with other fundamental rights and freedoms**, notably freedom to conduct a business, free movement of goods and services in the EU ([see previous FEDMA paper](#)) and freedom of speech (referred to in recital 4 GDPR and A29WP opinion on LI).
- GDPR adopts a **risk-based approach**. Also, the definition of LI has not changed since the 1995 Directive. In the case **C-468/10, C-469/10**, (ASNEF + FECEMD./ Administraci3n del Estado) which was decided based on the Data Protection Directive (i.e. same definition to LI as in GDPR), the European Union Court of Justice “made it clear that member states are not allowed to impose additional unilateral restrictions and requirements regarding the legal grounds for lawful data processing in their national laws.” (Source: Article 29 Working Party Opinion 2014 on LI).
- The A29WP Opinion refers to the need for the controller to take into account national law to know if the processing is “legitimate”. This **reference to the law is in a broad sense**, meaning “the purpose is not ruled out (excluded, banned) by law”. Therefore, processing of personal data under the GDPR may rely on LI as a lawful ground, even if for access the user’s terminal equipment, consent is required under the ePrivacy law. For example, email addresses are often used as identification in loyalty programs even though no emails are sent.

For the reasons mentioned hereabove, FEDMA draws to the EDPB attention to the approach taken in paragraphs 14 and 15 which explains that “article 6 of the GDPR cannot be relied upon by controllers in order to lower the additional protection provided” by ePrivacy Directive.

In our view, this approach undermines the agreement reached on the General Data Protection Regulation for a risk-based approach for the processing of personal data. The ePrivacy Directive protects data subject’s terminal equipment, which is different than protecting the processing of the personal data itself. FEDMA defends a thriving environment for marketers powered by user’s trust. We call for a fair and balanced interpretation of the GDPR, without confusing the objectives of the GDPR and ePrivacy.