

The European Data Protection Board (EDPB)

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## Response from the Danish Financial Supervisory Authority regarding the public consultation on Guidelines on the interplay of PSD2 and GDPR (o6/2020) published by the EDPB

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**MINISTRY OF INDUSTRY, BUSINESS  
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The Danish Financial Supervisory Authority (DFSA) welcomes the draft guidelines on the interplay of PSD2 and GDPR and the possibility to comment on these. We believe that the draft guidelines provide vital clarification on some very important topics. However, a few uncertainties remain, which we hope can be clarified in the final guidelines.

### **Chapter 1: Introduction**

An AIS is an online service to provide consolidated information on one or more payment accounts held by the payment service user either with another payment service provider or with more than one payment service provider cf. Art. 4 (16) PSD2.

According to the Commissions response to the EBA Q&A, question ID 2018\_4098, a provider, which collects account information and consolidates it, but *does not* present it to the customer, qualifies as a provider of an AIS. This interpretation thus covers providers, which collect the account information and consolidate it with the sole purpose of transmitting it to another party (e.g. a company that uses the received account information for a credit worthiness assessment), without ever showing the account information to the customer.

The DFSA notices that the EDPB in point 7 of the draft guidelines emphasises that according to recital 28 PSD2 it is *the payment service user*, who should be able to have an overall view of his/her financial situation immediately at any given moment, when using an AIS. This makes it unclear how the interpretation of the Commission should be understood in relation to these guidelines. More specifically, it is unclear how the guidelines apply to a provider that does not present the account information to the user, contrary to recital 28, i.e. how the guidelines apply to business models outside the scope of this recital.

Given that the purpose of an account information service is to give *the user* an overview of its financial situation, cf. recital 28, it is unclear how a service provider that collects and consolidates, but never presents the account information to the user, fulfills the fundamental principles of transparency and accountability, cf. Art. 5 GDPR. This could helpfully be clarified.

#### **Chapter 4: processing of silent party data**

The DFSA welcomes the clarification on the possibility for AISPs/PISPs to process silent party data.

We understand that the EDPB is of the opinion that consent from the silent party is not a feasible lawful ground for processing personal data of a silent party.

According to the draft guidelines, Art. 9 (2) (g) GDPR can be a feasible lawful ground for processing special categories of personal data, if all the conditions in the provision are met. In the draft guidelines, the EDPB emphasises that it should be demonstrated that the processing of the special categories of personal data is necessary for reasons of substantial public interest, including interests of systemic importance.

The DFSA believes that it cannot be argued that AISPs/PISPs are of systemic importance to the financial markets. Therefore, it should be further explored, whether AISPs/PISPs processing of silent parties' special categories of personal data is necessary for the substantial public interest for other reasons.

#### **Chapter 6: data minimisation**

The DFSA welcomes the clarification on the principle of data minimisation in relation to AISPs processing of personal data.

It is essential under the principle of data minimisation that controllers do not process more personal data than what is necessary in order to achieve the specific purpose, e.g. the concrete account information services requested by the customer.

We are aware that several AISPs have made (and still make) use of "screen scraping" to collect account information, which will continue until the PSD2 APIs are fully functional – and some may continue to do so in order to collect other types of data, e.g. data on savings accounts or loans, which are not necessarily covered by the APIs. It is our understanding of screen scraping that it allows an AISP to access the bank interface, e.g. online banking portal, of a customer in order to copy *all* available data on the given interface. Based on the draft guidelines, it is our understanding that the use of screen scraping

in order to retrieve the customer's account information does not comply with the principle of data minimisation in GDPR. Thus, we are unsure whether screen scraping shall be considered prohibited, as it is not compatible with GDPR. This could helpfully be clarified in the guidelines.

Yours sincerely

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