

Feedback on EDPB Guidelines 06/2020

on the interplay of the Second Payment Services Directive and the GDPR, Version 1.0, Adopted on 17 July 2020 for public consultation

I welcome the proposed guidelines and in particular the conclusion that silent party data can not be used for any purpose other than the one the data subject provided the data for. Still, I am concerned that processing of data will remain significantly invisible and impossible to trace and verify for data subjects unless the guidelines provide more concrete guidance on the way the rights of the data subject are to be applied to silent party data.

In particular, I am concerned that TPPs will apply the exception in GDPR article 14.5b so broadly as to make article 14 effectively meaningless. Of course there will be cases where a TPP will really be unable to identify the data subject. But if the market develops similar to for instance the UPI market in India and becomes dominated by a single tech giant¹, that party will be able to identify the silent party in most cases for the simple reason the silent party is also a customer with a known IBAN. The guidelines should make it clear that TPPs are expected to make every effort to identify and inform the silent party in accordance with article 14.1-3.

Additionally, I am concerned about the way data subjects can identify themselves to a TPP in order to ask access to all their data (including the data that is processed as silent party data) in accordance with GDPR article 15. Data subjects should be able to get access to that by proving control over an IBAN, which is commonly done by making a payment of EUR 0.01. As this would obviously conflict with the requirement that data access is free, more guidance on how a data subject can prove his identity would be welcome.

1 <https://www.statista.com/statistics/1034443/india-upi-usage-by-platform/>