

**Comments on the EDPB Guidelines 06/2020
on the interplay of the Second Payment Services Directive
and the GDPR - version 1.0**

15 September 2020

General comments:

PayBelgium welcomes the clarifications on the data protection aspects in the context of PSD2. In particular, we welcome the clarifications (and agree with the approach of the EDPB) in respect of:

- the concept “explicit consent” in the context of GDPR as opposed to PSD2;
- the requirements for the processing of silent party data; and
- the application of the principles of data minimisation, security, transparency, accountability and profiling.

However, we are concerned about the approach of the EDPB towards the processing of special categories of personal data under PSD2. We explain those concerns below.

Specific comments:

The Guidelines provide (paragraph 56) that if the derogation of Article 9(2)(g) GDPR (substantial public interest) does not apply, PSPs must ensure that they either (i) obtain explicit consent from the PSU to process special categories of personal data, or (ii) put in place technical measures to prevent the processing of special categories of personal data (“sensitive data”).

We agree that explicit consent from the PSU is required if the PSP intends to process sensitive data beyond the purpose for which the personal data are being collected (for instance for marketing purposes). We also agree that technical measures are required to prevent the processing for those purposes if the PSP does not obtain the PSU’s explicit consent.

However, to the extent the processing of sensitive data is limited to either (i) initiating payment transactions where those data may be included in the payment instruction, or to (ii) aggregating account information for the PSU (and only for the PSU), the processing of those data is required to allow the PSPs to properly provide their services (to which the PSU signed up). The situation is similar to those of ASPSPs (banks), which generally provide in their privacy policies that they will not process sensitive information unless it is a legal obligation or if it results from their core services, for instance if the client has put that type of information in a payment instruction. Any other interpretation would render the proper provision of payment services impossible.

We therefore urge the EDPB to reconsider this issue and to clarify that the requirement of explicit consent only applies to the extent PSPs intend to process sensitive information beyond what is required for the provision of the payment services to which the PSU signed up.