European Data Protection Board

October 2024

Legitimate interest
when and how to apply it





Organisations frequently process personal data to carry out tasks related to their activities.

In order to be able to process personal data, organisations must first ensure that the processing is lawful. Therefore, they must rely on one of the six legal bases set out in Art.6 GDPR, one of which is legitimate interest (Art.6(1) (f)).

Legitimate interest can be applied in different situations, such as building relationships with clients, direct marketing, fraud prevention, safety and security. The EDPB guidelines on legitimate interest explain when legitimate interest can, or cannot, be invoked.

In order to invoke legitimate interest, an organisation should reply positively to the three questions below:



STEP 1

Is there a legitimate interest by the controller or a third party?

Not all interests can be considered legitimate. As a general rule, the interest pursued by an organisation or a third party should be related to their actual activities and should not be contrary to EU or member state law. The legitimate interest should be clear and precisely articulated, and effective at the date of the data processing (not hypothetical).

Examples of legitimate interests may include fraud prevention, having access to information online, ensuring the continued functioning of publicly accessible websites, obtaining the personal information of a person who damaged someone's property in order to sue that person for damages, protecting the property, health and life of the co-owners of a building, commercial interest, product improvement and assessing the creditworthiness of individuals.



STEP 2

Is the processing really necessary for the legitimate interest?

When assessing if the processing is really necessary, the organisation should examine if the legitimate interest pursued can be achieved by other means less restrictive of the fundamental rights and freedoms of individuals.

Processing should be carried out only in so far as it is strictly necessary for the purposes of the legitimate interest identified. When carrying out this assessment, the organisation should examine if the data is relevant for the purpose pursued and limited to what is necessary to achieve this purpose (data minimisation principle).



STEP 3

Are the interests or fundamental rights and freedoms of individuals overridden by legitimate interest?

In order to apply legitimate interest, the third and last condition to be met is that the legitimate interest in question must not be overridden by the interests or fundamental rights and freedoms of individuals, taking into consideration the reasonable expectations of individuals based on their relationship with the organisation, and mitigating measures limiting the impact of the processing.

The interests of individuals that can override legitimate interest include, for example, financial interests, social interests or personal interests.

Fundamental rights and freedoms of individuals include the right to data protection and privacy, but also other fundamental rights and freedoms, such as the right to liberty and security, freedom of expression and information, freedom of thought, conscience and religion, freedom of assembly and association, prohibition of discrimination, the right of property, or the right to physical and mental integrity.

Read the guidelines