



# APF 2018 | Compatibility as a Mechanism for Responsible Further Processing of Personal Data

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# Intro | Research subject

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## Introduction of new provision for further use

- Article 6(4) GDPR
- Relation to Article 5(1)(b) GDPR: purpose limitation



## Consent as a mechanism for further processing

- Requirements
- Advantages and challenges



## Compatibility Assessment

- Assessment on whether new purpose is compatible with initial purpose
- Advantages and shortcomings
- Mitigations to get on par with consent



# Purpose limitation | Article 5(1)(b) GDPR

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**Article 5(1)(b) GDPR** states that “personal data shall be collected for specified, explicit and legitimate purposes and **not further processed in a manner that is incompatible with those purposes (...)**”.



- **What is (in)compatible use?**
- **Article 6(4) - new under the GDPR**  
The concept of ‘compatibility’ is not defined in more detail in Article 5(1)(b) – a shortcoming which is remedied by Article 6(4)

## Compatible use | Article 6(4) GDPR

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Further use of personal data is permissible when the use is based on:  
i) consent, ii) Union or Member State law or iii) **compatibility**.

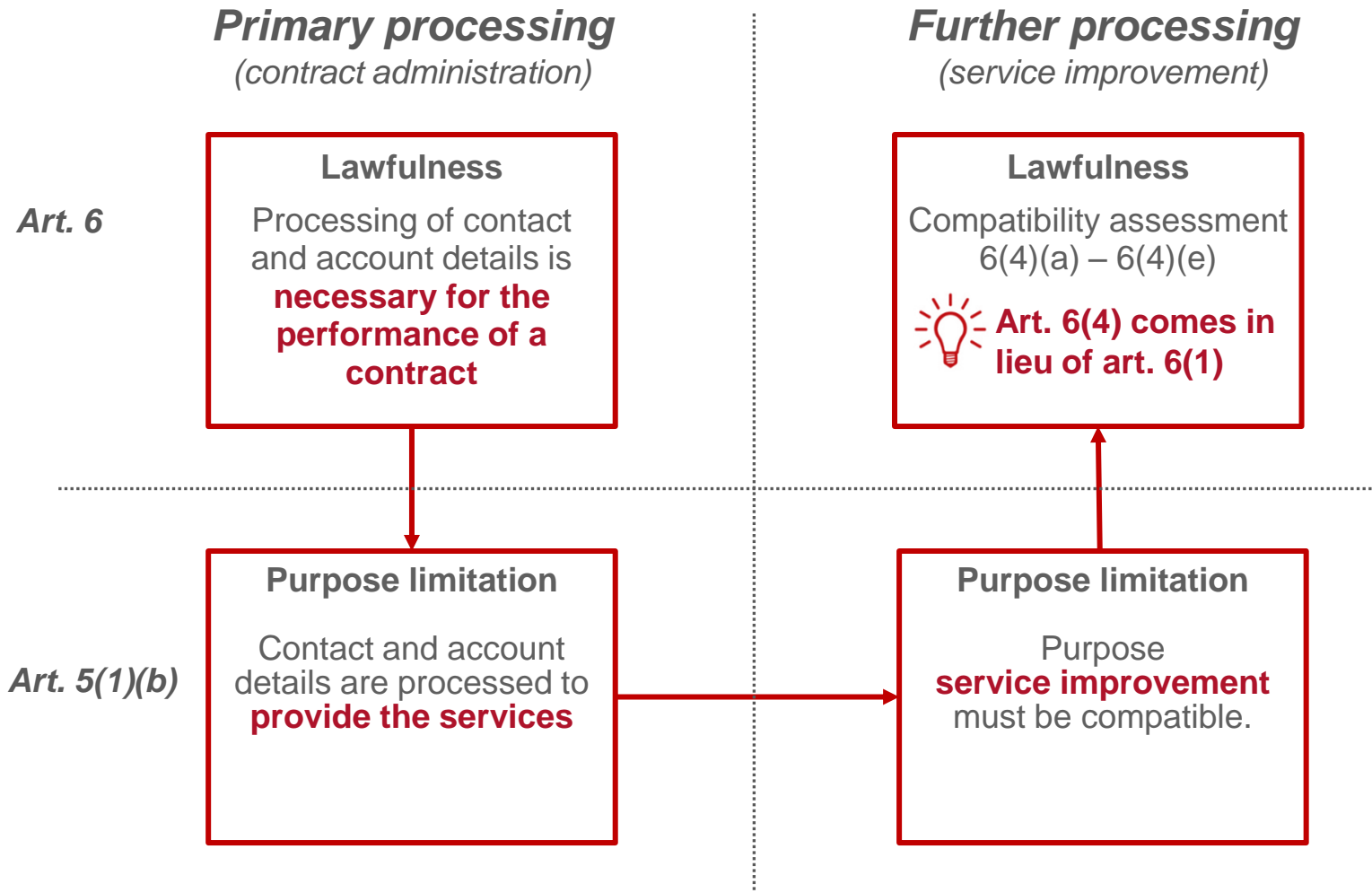
Further processing on compatibility requires a **compatibility assessment**, taking into account, *inter alia*, the following factors:

- a) the **link** between the initial and the new purpose
- b) the **context** in which the personal data have been collected
- c) the **nature** of the personal data
- d) the possible **consequences** of the intended further processing for data subjects
- e) the existence of **appropriate safeguards**.



Compatibility addresses both **lawfulness** and compliance with the principle of **purpose limitation**.

# Example | Lawfulness & purpose limitation



# Research approach | In-depth comparison

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We compared the two key mechanisms of enabling further processing of personal data – consent and compatibility – looking at the three most important areas of materializing privacy protection.



## Data Protection Principles

*Internationally endorsed since almost half a century*

Lawfulness, Transparency, Fairness, Purpose limitation, Data minimization, Storage limitation



## Data Subject Rights and Freedoms

*Depending on initial ground of processing*

Erasure, Portability, Objection, Choice & options



## Controller obligations and Interests

*Compliance, while enabling personal data business models*

Implementation & continuity, Profiling, Special categories of personal data


# Initial comparison | High level results

We initially compared the effect of consent and compatibility on the three most important areas of materializing privacy protection, without any additional (voluntary) mitigating measures taken

	Compatibility	Consent
<b>Data Protection Principles</b>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Accuracy, Integrity and confidentiality, Accountability</li> <li><input type="checkbox"/> Lawfulness, Transparency, Fairness, Purpose limitation, Data minimization</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Lawfulness, Transparency, Fairness, Purpose limitation, Data minimization, Accuracy, Integrity and confidentiality, Accountability</li> </ul>
<b>Data Subject Rights &amp; freedoms</b>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Access, Restriction, Cognitive load</li> <li><input type="checkbox"/> Erasure, Portability, Objection, Choice &amp; options</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Access, Erasure, Portability, Restriction, Objection, Choice &amp; options</li> <li><input type="checkbox"/> Cognitive load</li> </ul>
<b>Controller obligations &amp; interests</b>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Controller obligations, International data transfer, Profiling, Implementation impact, Processing continuity, Direct marketing</li> <li><input type="checkbox"/> Special categories of personal data</li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Controller obligations, International data transfer, Special categories of personal data, Direct marketing</li> <li><input type="checkbox"/> Profiling, Implementation feasibility, Implementation impact, Processing continuity</li> </ul>

# Improvements | Mitigation actions

Measures to improve compatibility mechanism	Data Protection Principles	Data Subject Rights & freedoms	Controller obligations & interests
<b>Pull notices</b> Additional transparency controls	<input checked="" type="checkbox"/> Transparency, Fairness, Purpose Limitation	Good initial performance	Good initial performance
<b>Voluntary Opt-out</b> Provide voluntary opt-out possibilities to mitigate negative consequences of data processing	<input checked="" type="checkbox"/> Fairness, Purpose Limitation, Data minimization	<input checked="" type="checkbox"/> Objection	Good initial performance
<b>Permission management</b> Implement permission management system to provide user control	<input checked="" type="checkbox"/> Fairness, Purpose Limitation, Data minimization	<input checked="" type="checkbox"/> Choice & options	Good initial performance
<b>Erasure trigger</b> Implement erasure triggers that activated the retention process in the same way as consent withdrawal would	<input checked="" type="checkbox"/> Storage limitation	<input checked="" type="checkbox"/> Erasure	Good initial performance
<b>Extended data portability scope</b> Grant voluntary portability for <i>all</i> personal data used for further processing	Good initial performance	<input checked="" type="checkbox"/> Portability	Good initial performance

 Special categories of data, here we may continue to face limitations to finding exception grounds to lift the prohibition of further processing.



# Summary & conclusion | What is learned?

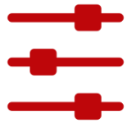
Initially, on basis of minimum legal GDPR requirements:



**Consent** preferred choice w.r.t data protection principles and guaranteeing data subject rights and freedoms.

**Compatibility** preferred option w.r.t. controller obligations & interests.

Already a limited number of additional measure help to mitigate the shortcomings of the compatibility mechanism for further use:



**Permission management**, including user-centric communication channels to the data subject for additional transparency (**pull notices**).

**Outperforming opportunities:** what controllers should do to responsibly further use personal data based on compatibility:



Make a thorough Compatibility assessment



Be transparent beyond the legal minimum



Bring individuals in control of their data

For (privacy) advanced players in the market compatibility will be the rule rather than the exception

# Paper session | Authors & Download

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[Download the research paper here.](#)



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