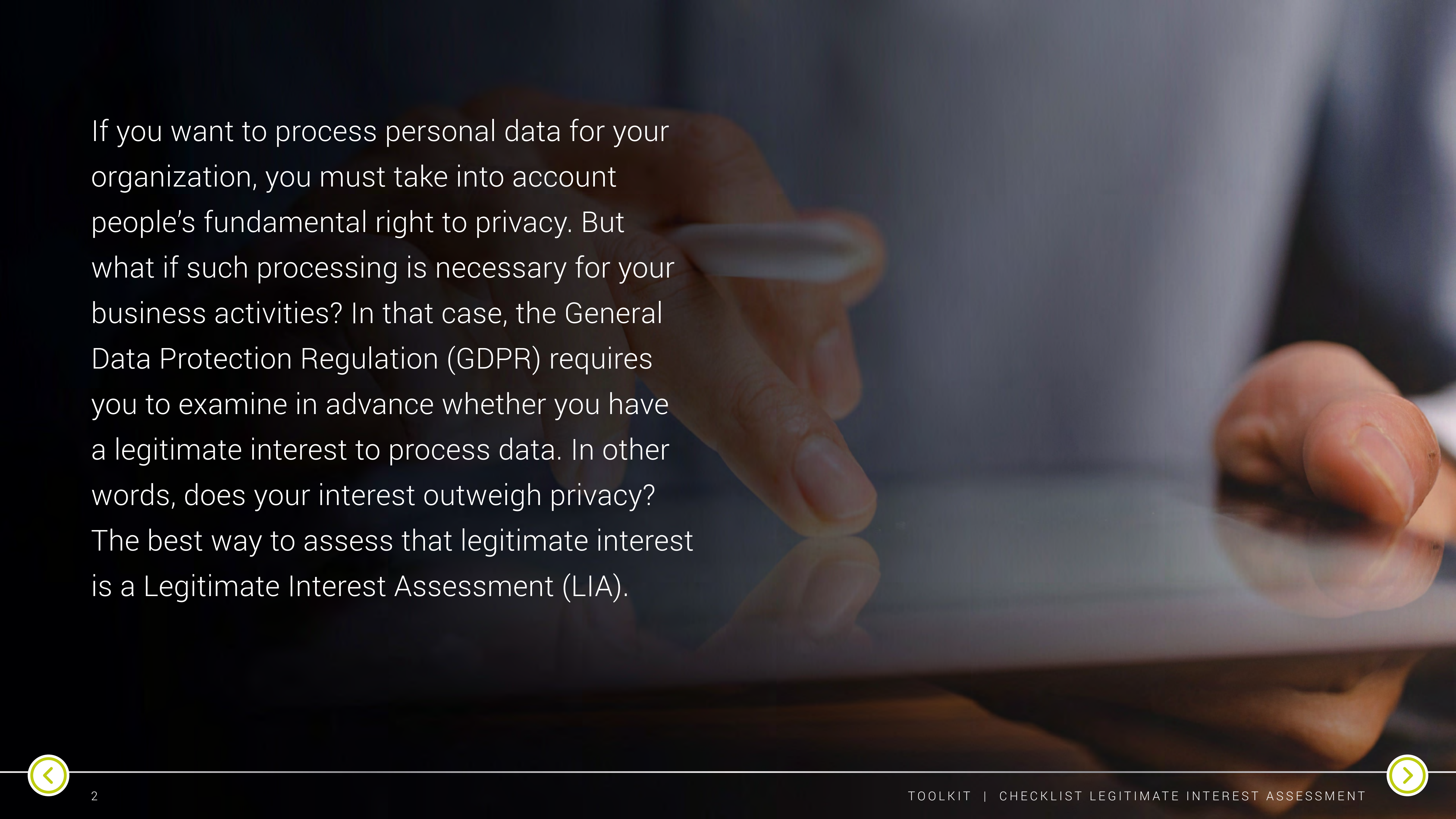


TOOLKIT

Checklist Legitimate Interest Assessment



DPO Consultancy
Experts in Data Privacy



If you want to process personal data for your organization, you must take into account people's fundamental right to privacy. But what if such processing is necessary for your business activities? In that case, the General Data Protection Regulation (GDPR) requires you to examine in advance whether you have a legitimate interest to process data. In other words, does your interest outweigh privacy? The best way to assess that legitimate interest is a Legitimate Interest Assessment (LIA).

The GDPR lists six possible bases on which you can rely to be allowed to process personal data (GDPR art.6, paragraph 1, parts a to f). If the purpose of your specific data processing falls within at least one legitimate basis, you may process the personal data for that specific purpose. In addition, you must meet the other requirements of the GDPR. Incidentally, you may not use the data for other purposes just like that. So always check carefully whether your processing fits within one of these bases.

Most of the bases (parts a to e) in the GDPR are fairly unambiguous because they concern consent or a specific purpose:

- a. you have permission from the natural person (“data subject”)**
- b. you have to process data to perform a contract with the data subject**
- c. you are legally obliged to process the data**
- d. you have to process data out of (acute) vital interest for the data subject or someone else**
- e. you must process data to properly perform a task of public interest or public authority**

You can check relatively easily whether you meet one or more of these first five bases. But what do you do if the data processing is necessary for your business activities? Then how do you determine whether infringement of privacy is justified? In that case, the sixth base is relevant:

f. you need to process data for your own interest and that outweighs (= justified interest) the privacy of the data subject.

This sixth basis is less unambiguous than the other five because you can apply it to any type of processing for any reasonable purpose. If the interest of the data subject outweighs your interest as the controller (or that of a third party), there is no legitimate interest.

If you want to use this basis, you must describe your business interest and substantiate why that interest, for that specific data processing, outweighs the privacy interest of the data subject.

This checklist will help you decide whether you can invoke a legitimate interest for the processing of personal data that you intend.

“Data privacy is good for business. It impacts how customers perceive your brand, how employees view their workplace and how authorities and media outlets treat your company.”

What is an LIA?

An LIA is an interest assessment that you must perform before you begin processing personal data to determine whether you can invoke a legitimate interest in doing so. The LIA answers the question: Is legitimate interest in my situation an appropriate lawful basis for processing personal data?

Why is an LIA necessary?

An LIA reassures your organization and other parties that you handle privacy-sensitive information with care. By stating in your privacy statement that you collect data on the basis of legitimate interest, you create trust and even help prevent possible complaints. It is therefore advisable to implement an LIA as a structural part of your privacy policy.

The GDPR does not require you to conduct an LIA, nor does it mention how you might do so. The term LIA is not even mentioned. However, the law, which has been in effect in the EU since 2018, does require you to conduct such an interest assessment and document it. After all, when the Personal Data Authority or a data subject asks for it, you will have to demonstrate and justify for what and how you process personal data. If you do not have an LIA, such a request can significantly disrupt your daily operations as well as your relationship with natural persons.

How do you tackle an LIA?

The GDPR provides a legal basis for making such an assessment or balancing of conflicting legal interests. Namely, it sets three cumulative conditions you must meet in order to process data lawfully (review framework). If you want to invoke that legitimate interest, you have to prove that you meet all three conditions. The conditions are successively: purposefulness, necessity and balancing of interests.

The GDPR leaves you free to decide what your LIA should look like and does not specify which factors can play a role in meeting the three conditions. Experience shows that the best way to conduct an LIA is to test each condition separately, using a three-stage approach. At each stage, you then step by step examine all kinds of aspects to ultimately determine whether you can use the legal ground of legitimate interest and whether the data subjects can reasonably expect that the processing will actually take place on the basis of a legitimate interest.

Legitimate Interest Assessment in three steps

1. Purpose Test: Determine whether the processing is legally justified.

In this step, you determine whether there is a purpose to justify the interest of the processing. In other words, is there a legitimate interest that can support your processing of personal data or not?

To find out, you can ask the following questions:

	Explain
Why do you want to process the data?	
What benefits does the processing provide to you?	
What benefits does the processing provide to third parties?	
Are there broad public benefits in doing the processing?	
How important are the benefits you have identified?	
What are the consequences of not processing the data?	
What is the intended outcome for data subjects?	
What specific data protection laws, such as profiling or e-privacy regulations do you comply with?	
What other relevant laws and regulations do you comply with?	
What specific regulations and codes of conduct related to your area of expertise do you comply with?	
Are there any ethical concerns about processing?	

Legitimate Interest Assessment in three steps

2. Necessity test: assess whether the processing is necessary

In this next step, you assess whether the processing is actually necessary for the purpose you determined in the purpose test.

To determine that, you can ask the following questions:

	Yes	No	Explain
Does the processing help achieve your purpose?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the processing proportionate to your purpose?	<input type="checkbox"/>	<input type="checkbox"/>	
Can you achieve the goal without the processing or with less data?	<input type="checkbox"/>	<input type="checkbox"/>	
Can you achieve the goal by other means, such as processing them in a less intrusive way that harms the data subject less?	<input type="checkbox"/>	<input type="checkbox"/>	

Legitimate Interest Assessment in three steps

3. Balancing test: consider whether your interest outweighs the privacy interest

In this step, you weigh conflicting interests against each other and your business interest against the privacy interest of the data subjects, respectively. You determine the impact of the processing on the data subject and whether that impact is more or less important than your legitimate interest.

To determine that, there are three categories of questions you can ask:

A. What is the nature of the personal data?

The GDPR imposes additional requirements and safeguards for the processing of special personal data. To assess whether this is the case, you need answers to questions such as:

	Yes	No
Does it involve vital or sensitive data?	<input type="checkbox"/>	<input type="checkbox"/>
Does it involve special or criminal data?	<input type="checkbox"/>	<input type="checkbox"/>
Does it involve data that the data subject may label as “private”?	<input type="checkbox"/>	<input type="checkbox"/>
Do you process data of children or other vulnerable groups?	<input type="checkbox"/>	<input type="checkbox"/>
Does it involve data about people in their private or professional capacity?	<input type="checkbox"/>	<input type="checkbox"/>

B. What reasonable expectations does the individual have?

	Yes	No	Explain
Do you have an existing relationship with the data subject, and if so, of what nature?	<input type="checkbox"/>	<input type="checkbox"/>	
Have you used the data in the past, and if so, how?	<input type="checkbox"/>	<input type="checkbox"/>	
Is there any data that the data subject may classify as “private”?	<input type="checkbox"/>	<input type="checkbox"/>	
Do you process data of children or other vulnerable groups?	<input type="checkbox"/>	<input type="checkbox"/>	
Does it involve data about people in their private or professional capacity?	<input type="checkbox"/>	<input type="checkbox"/>	
Do you collect the data directly from the data subject, and what do you tell them?	<input type="checkbox"/>	<input type="checkbox"/>	
Have you informed the data subject of any reuse of data?	<input type="checkbox"/>	<input type="checkbox"/>	
If you obtained the data from a third party, what did they tell the data subject about reuse?	<input type="checkbox"/>	<input type="checkbox"/>	
How long ago did you collect the data. Are there any changes in the current state of technology or other context of collection that may change the data subject’s expectations?			

B. What reasonable expectations does the individual have?

	Yes	No	Explain
Are your purpose and method of collection adequately understood?	<input type="checkbox"/>	<input type="checkbox"/>	
Do you plan to do something new or innovative with the data?	<input type="checkbox"/>	<input type="checkbox"/>	
Do you have any evidence of the data subject's expectations, such as from research?	<input type="checkbox"/>	<input type="checkbox"/>	
Are there factors that may or may not cause the data subject to expect the intended processing?	<input type="checkbox"/>	<input type="checkbox"/>	

C. What risk does the individual face?

	Explain
What will be the impact of the processing on the data subject?	
If the processing has an impact, how likely and severe could it be?	

	Yes	No	Explain
Can the data subject lose control of the data?	<input type="checkbox"/>	<input type="checkbox"/>	
Is there a high probability that the data subject will oppose the processing or view it as an intrusion?	<input type="checkbox"/>	<input type="checkbox"/>	
Are you prepared to explain the process of processing to the data subject?	<input type="checkbox"/>	<input type="checkbox"/>	
Can you take measures to mitigate possible adverse effects on the data subject? If so, what measures are they?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the data processing restrict the data subject in the exercise of rights?	<input type="checkbox"/>	<input type="checkbox"/>	

**Do you have any additional questions about
the TIA or other specific topics?**
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