



**Title: EDPB OPINION ON THE PROCESSING OF PERSONAL DATA IMPLEMENTED VIA ARTIFICIAL INTELLIGENCE (AI) MODELS**

*Brief Overview:*

In a 2024 opinion, EDPB clarifies how AI models can be deemed anonymous, refines the use of “legitimate interest” under the GDPR, and highlights risks of unlawful data processing. It introduces two new balancing test criteria, marking a shift in data protection interpretation.

On October 4, 2024, the Court of Justice of the European Union (CJEU) handed down a ruling reiterating **EDPB opinion on the processing of personal data implemented via artificial intelligence (AI) models**

Seized with a request for an opinion by the Irish Data Protection Authority, the European Data Protection Board (EDPB) issued [an opinion](#) on December 17, 2024<sup>1</sup>, addressing the following questions related to the processing of personal data implemented via an AI model (an essential component of AI systems):

- *Under what conditions, i.e. when and how, can an AI model be considered "**anonymous**"?*
  - The EDPB states that the anonymity of an AI model results from a **case-by-case assessment** by competent authorities, which must conclude that the following probabilities are **insignificant**: (i) the probability of directly **extracting personal data** concerning individuals whose data were used to train the model; and (ii) the probability, whether intentional or unintentional, of obtaining such personal data through **queries**.
- *How can data controllers demonstrate "**legitimate interest**" as a legal basis during the **development** and **deployment** phases of an AI model?*
  - The General Data Protection Regulation (GDPR) establishes three conditions for selecting this legal basis: (1) identification of the legitimate interest of the controller or a third party, (2) assessment of the necessity of processing, and (3) balancing of such interest against the fundamental rights and freedoms of the data subjects.
  - In this opinion, the EDPB specifies that four criteria must be considered in conducting this balancing test: (a) the fundamental rights, freedoms, and interests of the data subject, (b) the impact of processing during development and deployment, (c) the **reasonable expectations of the data subject**, and (d) the possibility of implementing **mitigation measures** when the

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<sup>1</sup> EDPB, *Opinion 28/2024 on certain data protection aspects related to the processing of personal data in the context of AI models*, adopted on 17 December 2024



balance of interests is unfavorable to the data subject. Criteria (c) and (d) are affirmed for the first time by the EDPB and represent a significant shift in GDPR interpretation.

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- What are the **consequences of unlawful processing of personal data** during the development phase of an AI model on its subsequent processing or exploitation?
  - The EDPB reiterates the **discretionary power of supervisory authorities**, which impose proportionate sanctions on entities. In this regard, the French Data Protection Authority (the CNIL) imposed three sanctions in 2024 for unlawful processing due to a lack of a valid legal basis, with fines ranging from €16,000 to €525,000.

Although the EDPB's responses are welcome, legal commentary has criticized the opinion for its silence on general-purpose AI models (defined as models capable of competently executing a broad range of distinct tasks) and for certain "*semantic shifts, generalizations contra legem, compartmentalizations, and even internal contradictions*"<sup>2</sup>.

Nonetheless, **providers are responsible for taking all necessary measures**, notably under the Artificial Intelligence Regulation (AI Act), to ensure that their AI models comply with the GDPR throughout both the development and deployment phases. In this respect, **the legal basis for processing personal data must be carefully selected and properly justified**, particularly when the provider relies on "legitimate interest."



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<sup>2</sup> Juliette Sénéchal, *Publication of the EDPB Opinion of December 17, 2024, on the Processing of Personal Data in the Context of AI Models: Premises of a Deep Transformation of the GDPR?*, Dalloz IP/IT Communication, January 17, 2025