

Contribution to public consultation

Guidelines 01/22 on data subject rights - Right of access

7 March 2022

1 Occasion

Individuals are not currently a constituent part of the digital ecosystems that have been or are being put in place to boost the data economy: not in the AdTech industry, not on the Internet of Things, not in Gaia-X, not in the exchange of patient data, and not in traffic and transportation management and vehicle data. The strength of the Qiy Foundation¹ is that it has developed and operates a system (the "[Qiy Scheme](#)") in which the individual becomes the fulcrum of their own (validated or verifiable) data.

In this framework, access to personal data is important, but being able to re-use this data is just as important. This gives individuals the possibility to (also) have control of their own personal data. It enables them to pass on up-to-date and reliable data from one party to another who may request and need it.

On 18 January 2022, the European Data Protection Board (EDPS) submitted for public consultation [guidelines](#) on the right of natural persons who are in the European Union to access their own personal data. The Qiy Foundation is happy to contribute to this consultation.

As far as the Qiy Foundation is concerned, it is important for the EDPB to realize and recognize that the European legislator intended to provide individuals with control over their own personal data. After all, Recital (7) of the preamble to the GDPR states, "Natural persons should have control of their own personal data." Such recognition is of great importance for the resolution of all kinds of social issues.

¹ The Qiy Foundation is a non-governmental organisation which advocates that individuals in the digital world have the same rights and opportunities as in the physical world. It does this by working with stakeholders on the development of formats for digital ecosystems that, in a privacy friendly manner, provide solutions to a variety of societal issues (new sustainable sources of income for sports clubs, charities and cultural institutions; debt relief; digital legacy; health data exchange; Internet of Things data processing; data processing in the context of AdTech, AI, virtual voice assistance, vehicle data, etc.).



2 Proposed guidelines hamper innovation

Natural persons who are in the European Union are entitled to a copy of their data "in a common electronic format." The EDPB rightly takes the position that, if it is in the data subject's interest, a data controller may also choose, instead of handing over a copy, to allow remote and non-permanent access to the data subject. But this is unfortunately not elaborated on in the proposed guidelines, even though it offers interesting possibilities. Namely, an individual may be given the ability to access his or her data online at any time that there is a need to do so.

If the source from which the data is requested provides the relevant data with a time stamp and a hallmark, the citizen himself/herself can prove to third parties that the data is recent and that the accuracy of the data is confirmed by the source. Technically, this can be set up in such a way that the data cannot be altered by the individual along the way.

But unfortunately, the EDPB rejects this. Indeed, the proposed guidelines explicitly do not allow an individual who accesses their data electronically in the manner outlined to also download it for the purpose of making it available to third parties. This is strange, because at the same time the EDPB does accept that the individual is entitled to a paper version or a pdf file. These versions can of course be made available to third parties without any problem and with all associated risks, such as identity fraud or data theft. So these risks do not arise from electronic reuse. However, the guidelines do not even mention making the data available to third parties in ways other than downloading. The result is that innovation risks being hampered and efficient solutions to important social issues are blocked.

- An individual has electronic access to their data at any time that is lawfully (allowed to be) processed by a source;
- the source identifies and authenticates the individual with an authentication means of the source's choice;
- the individual then selects which data he wishes to make available to a third party and chooses whether this must be the data as such or whether it can be limited to a confirmation by the source of the presence or correctness of a particular piece of data.
- the system can be technically arranged so that the source making the data available to the individual in question cannot see to which third party that data (or the confirmation of the existence or accuracy of that data) is being transmitted by the individual in question. This is important for protecting the privacy of the individual.

Based on the principles described in the box above, the following formats have been developed in the past:

- 1 Scoring for your Club: a new and sustainable cash flow for sports clubs, charities and cultural institutions.
(<https://scoorvoorjeclub.nl/>),
- 2 Debt assistance (fiKks): you anonymously make a validated overview of your debt positions available to a debt assistance provider.
(<https://wijgaanhetfikksen.nl/samenmetfikks/> and <https://www.youtube.com/watch?v=kiML9HUyspw>),
- 3 Age declaration (for online gaming, for social media, lotteries, online gambling, etc.)
(<https://www.youtube.com/watch?v=WQJwtgK1xIA>),
- 4 Data exchange between municipality and housing association in connection with registration for a house.
(<https://www.youtube.com/watch?v=Zm4ioDEjWAK>).

Of these formats, Scoring for Your Club is the only one based on which a socially highly relevant service could actually be developed that is now starting to gain traction. This is because the second payment services directive (PSD2) has made it possible for individuals to make their payment data available to third parties of their choice. No concrete applications based on the other three formats mentioned could yet be developed. This is because it has become apparent that government agencies are not prepared to allow citizens to make personal data they administer available or to make such data available for inspection by third parties under the citizens' own direction and while retaining authenticity features. The interpretation of the right of access envisaged by the EDPB will only reinforce this unwillingness, which is undesirable because it will block innovative solutions to important social issues.

3 Our recommendations

As far as the Qiy Foundation is concerned, it is desirable for the EDPB to shape its intended policy, as reflected in the proposed guidelines, in such a way as to promote the reuse of data while maintaining authenticity features and under the control of the natural persons whose data it concerns. Technically and organizationally, this is already possible. It is also more in line with what the GDPR intends. Moreover, the system can be set up in such a way that a data source administrator cannot find out to whom a data subject makes his or her data available. What is still missing is a more innovative and future-oriented vision of the EDPB.
