

RUTGERS & POSCH

**GDPR COMPLIANCE AND GREEN
COVERED BONDS**

**PRIVACY CONSIDERATIONS REGARDING THE COLLECTION
AND PROCESSING OF 'GREEN DATA' BY MORTGAGE LOAN
PROVIDERS**

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EVENT 7

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Energy
Efficient
Mortgages
Initiative





AGENDA

1. Are green data/energy performance data personal data?
2. When energy performance data qualify as personal data, what does that mean?
3. What if mortgage providers need access to third party sources that store energy performance data?
4. The way forward



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ARE ENERGY PERFORMANCE DATA PERSONAL DATA?



GDPR defines personal data as:

- any information relating to an identified or identifiable natural person ('data subject')
- natural person is one who can be identified, directly or indirectly, by reference to an identifier such as a name or address
- reasonably be identified without disproportionate effort

FOR GREEN DATA:

- Database is expected to include addresses of data subjects
- Energy performance data/carbon footprint of data subjects is identifiable indirectly
- No disproportionate effort



WHEN ENERGY PERFORMANCE DATA QUALIFY AS PERSONAL DATA, WHAT DOES THAT MEAN?

How mortgage loan providers can lawfully process green personal data under GDPR:

- consent
- necessary for performance of mortgage loan agreement
- necessary to comply with legal obligation
- necessary for the legitimate interests of the data controller or a third party

Therefore, each basis has its own advantages and shortcomings..



WHAT IF MORTGAGE PROVIDERS NEED ACCESS TO THIRD PARTY SOURCES THAT STORE ENERGY PERFORMANCE DATA?

Green data collected from third party sources equally requires a legal basis to enable the lawful processing of personal data.

MORE LIMITATIONS APPLY

- collecting data from third party sources above, must be consistent with the purpose for which the data were originally collected: could be a difficult hurdle
- crucial which purposes and legal bases were determined by the relevant source at the time of collection and what was communicated to the data subjects in this respect



THE WAY FORWARD



- EEMI's GDPR analysis serves as blueprint and starting point for each individual mortgage loan provider in individual EU member states
- Analysis varies by countries due to differences in regulators, court interpretations and local privacy rules
- Analysis also differs per type of financial institution
- Due to remaining uncertainties and risks, a statutory basis for mortgage loan providers to lawfully process green data should be considered

