



FEDMA comment to the Article 29 Working Party guidelines on Data Protection officers

The Federation for European Direct and Interactive Marketing (FEDMA) welcomes the work of the Article 29 Working Party on the guidelines on Data Protection Officers, under the GDPR. FEDMA appreciates the opportunity to comment on this document.

FEDMA welcomes the concept of Data Protection Officers as part of the accountability principle of the GDPR and its risk based approach, thus sustaining the intention of the legislator to have a flexible text which ensures individual's personal data protection while enabling access to personal data. FEDMA understands that a Data Protection Officers can play an important role in providing support to an organisation beyond what is required by the GDPR, however, it is important that these guidelines provide a clear distinction between situations where a Data Protection Officers is a legal requirement per the GDPR and situation where it is desirable to have a Data Protection officer to support an organisation's personal data processing, such as, for instance facilitating the transition of an organisation to the GDPR regime.

We would like to highlights 3 important aspects, which FEDMA feels should be strengthened in the guidance of the article 29 Working Party:

A case by case analysis should always be the necessary prerequisite to identify whether a Data Protection Officer is legally required or not. Controller and processor should not have to have a DPO simply because they are part of a specific industry sector, but rather because the assessment of their respective data processing requires it under the GDPR. As an example, section 2.1.4 of the guidelines refers to "loyalty programs". While the personal data processing made in the context of loyalty programs may correspond to the definition of "regular and systematic monitoring, it might not always be the case. In particular if such loyalty programs take place in the offline world, carried out by small organisations. The legal requirement for a Data Protection Officer should not be defined by a general industry practice but must be the result of a specific and justified analysis of a particular case.

When defining the concept of "large scale" as a criteria for a Data Protection Officer, FEDMA welcomes the reference to the volume of data and the number of data subjects concerned. FEDMA believes that this criteria is directly related to the size of the organisation carrying the personal data processing. Thus, in such context, the heavy burden that a Data Protection Officers (even an external one) would have on the organisation should also be taken into consideration. FEDMA would like to highlight the considerable costs, strengthened by the lack of qualified Data Protection Officers in Europe, as well as the difficulties to comply with independence and knowledge level requirements, this provision of the GDPR would have if to apply on any small organisation's data processing.



Finally, FEDMA would like to call for guidance with regard to the role of DPO for processor. Whether the criterion for a processor's DPO are the same as for a controller. It may also be relevant to consider the role of the processor's DPO, in relation to the role of the controller's decision. In particular, situations where a processor's DPO's decision may directly overstep on the controller's DPO responsibilities, and impact on the controller's ability to define the personal data processing, thus changing the nature of a controller/processor relationship.

FEDMA believes that the concept of a DPO is favorable to the accountability principle set up by the GDPR. However, the criterion for having a DPO must be further defined, in particular with the controller/processor relationship.

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