

EDPB consultation on draft Guidelines 9/2022 on personal data breach notification under GDPR

FEDMA is pleased to provide its input to the European Data Protection Board's (EDPB) draft targeted Guidelines 9/2022 on personal data breach notification under GDPR.

Though the additional paragraph is in line with the current version of the Guidelines, the draft update to the document does not address the main hurdles that companies face when notifying a data breach, but it even consolidates them. Specifically, FEDMA wishes to highlight the following issues:

- Having to submit a national notification form "to every single authority for which affected data subjects reside in their Member State", companies need to navigate through different national notification form systems which are generally difficult to fill out and sometimes have to be filled out online, making it difficult for multiple and geographically spread teams to fill out the relevant sections. **The breach notification process to the DPAs should thus be simplified with a centralised, single reporting form** in English applicable across all EU countries (and translated into local languages, as the case may be).
- Though the current Guidelines provide clarifications on the concept of "awareness" related to a data breach, there remains a degree of uncertainty around the reporting time frame when a weekend or bank holiday falls into the notice period of 72 hours. Companies have also voiced concern on the **lack of clarity on the cases when DPAs would accept a delayed notification**, where such notification cannot be made within 72 hours. FEDMA thus recommends furthering the dialogue between the EDPB, DPAs and industry to define use cases and scenarios or thresholds where such delayed notification would be expected.
- We also deem necessary to provide more clarity in which cases a breach is unlikely to result in a risk to the rights and freedoms of individuals. As a result of this uncertainty, **many organisations tend to over report data breaches, often with an excessive amount of information**. This does not only represent an unnecessary burden for companies, but it results in **"swamping" DPAs with thousands of unnecessary or trivial notifications**. FEDMA believes that the EDPB should work together with organisations to build consensus and updated guidance with examples of non-reportable breaches.
