

Dear colleagues,

- 1) I suggest to add explanations to defining of processor in clause 81 (the processor without processing) and third party in clause 87 (someone who has no intention to process data).

The supportive criteria for the controller to decide: whether the counterparty is a processor or only a third party might be the controller's expectation whether the party can potentially have an access and processing of personal data, or can not.

E.g. the IT consultant (one of examples in clause 81) can potentially access and process client's personal data for billing, calls, reports, making notes, printing the errors, writing some emails, responses, etc.

But the cleaner (in the example in clause 87) can't have even a potential processing, at least the controller can't expect such activity from the cleaner.

So acting with a conscientiousness, the controller should rely on it's reasonable expectations: whether its counterparty may potentially access and process personal data (so it will be a processor) or not (so it will be a third party).

- 2) As for Recipients, it is not clean, what is the difference between them and the Third party and what are the consequences of this status for the party and for the relationships with data subjects (listing of all Recipients in a privacy notice? How detailed should be this listing? What to do in case of everyday rotation of Recipients?).

- 3) I also recommend to clarify in clause 1.3.1 the following questions:

- Whether the processor has right to negotiate the controller's instructions especially, when required security measures are too expensive for the processor, or in other circumstances of disagreement?
- Could processor object against some parts of the instructions?
- Is there an obligation for processor to join any instructions (except illegal?).
- What is the legal nature of "controller's instructions": offer/accept, unilateral deal, something else?

Kind regards,

Elena Sebyakina

CIPP/E, PbD, Privacy advisor