

Comments regarding Guidelines 02/2021 on Virtual Voice Assistants, Version 1.0, adopted on 9 March 2021

Introduction

Floreani Studio Legale Associato welcomes the opportunity to provide a response to the European Data Protection Board's consultation on the drafts Guidelines 02/2021 on Virtual Voice Assistants and invites the EDPB to evaluate the following proposals as well as to clarify the problems highlighted below.

3 ELEMENTS OF DATA PROTECTION

3.1 Legal framework

Para. 31: *“Moreover, it should be noted that the personal data processed by VVAs may be highly sensitive in nature. It may carry personal data both in its content (meaning of the spoken text) and its meta-information (sex or age of the speaker etc.). The EDPB recalls that voice data is inherently biometric personal data”.*

Comment: We propose the EDPB to clarify the statement for which that “voice data is inherently biometric personal data” and to specify that voice data are biometric “only when processed through a specific technical means allowing the unique identification or authentication of a natural person” (recital 51) as expected by note 31 referred to in paragraph 81 of the Guidelines.

3.3 Transparency

Para. 59: *“In order to comply with the GDPR, data controllers should find a way to inform not only registered users, but also non-registered users and accidental VVA users. These users should be informed at the earliest time possible and at the latest, at the time of the processing. This condition could be especially difficult to fulfil in practice”.*

Comment: We suggest the EDPB to mention in the Guidelines some further practical solutions and advice on terms under which data controllers must inform registered users, non-registered users and accidental VVA users.

3.4 Purpose limitation and legal basis

3.4.4 User profiling for personalized content or advertising

Para. 87: “If processing is not strictly “necessary for the performance of a contract” within the meaning of Article 6(1)(b) GDPR, the VVA provider must, in principle, seek the consent of the data subject. Indeed, because consent will be required under Article 5(3) of the e-Privacy directive for the storing or gaining of access to information (see paragraphs 29-30 above), consent under Article 6(1)(a) GDPR will also, in principle, be the appropriate legal basis for the processing of personal data following those operations as reliance on legitimate interest could, in certain cases, risk undermining the additional level of protection provided by Article 5(3) of the e-Privacy directive”.

Comment: We propose the EDPB to evaluate the opportunity to indicate the relationship between the legal basis of legitimate interest and the level of protection provided by article 5 (3) of the e-Privacy directive.

3.5 Processing of children’s data

Para. 91: “Children can also interact with the VVAs or can create their own profiles connected to the ones of the adults. Some VVAs are embedded in devices which are specifically aimed at children”.

Comment: With reference to the highlighted paragraph, we propose the EDPB (in relation to the interaction with the VVAs) to specify as required by recital 38 that minors deserve specific protection with regard to their personal data and, in particular, with regard to the processing of personal data for the purposes of marketing or creating personality or user profiles.

4 MECHANISMS TO EXERCISE DATA SUBJECT RIGHTS

4.1 Right to access

Para. 158 “The right of access should not be used to counter / to get around the principles of minimisation and data retention”.

Comment: It is suggested to the EDPB to specify the prohibition of using the right of access as a tool to counter / to get around the principles of minimisation and data retention.

We would be grateful for your consideration of our comments and proposals and remain available for any clarification and further information.

Sincerely,

22 April 2021