



EGDF 57235487137-80

19.10.2020,

## **EGDF response on EDPB guidelines on the concepts of controller and processor in the GDPR**

### **About EGDF**

**The European Games Developer Federation e.f. (EGDF)**<sup>1</sup> unites national trade associations representing game developer studios based in 19 European countries: Austria (PGDA), Belgium (FLEGA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Malta (MVGSA), Netherlands (DGA), Norway (Produsentforeningen), Poland (PGA), Romania (RGDA), Serbia (SGA), Spain (DEV), Sweden (Spelplan-ASGD), Slovakia (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). Altogether, through its members, EGDF represents more than 2 500 game developer studios, most of them SMEs, employing more than 35 000 people.

**Games industry** represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. European digital single market area is the third-largest market for video games globally. In 2019, Europe's video games market was worth €21bn, and the industry has registered a growth rate of 55% over the past 5 years in key European markets<sup>2</sup>. All in all, there are around 5000 game developer studios and publishers in Europe, employing closer to 80 000 people.<sup>3</sup>

**Game developer studios and publishers tie the data value chain together.** Digital games unite a number of different digital services from social media and advertisement to player analytics to back-end servers to the flawless player experience. Consequently, EGDF welcomes EDPB guidelines bringing much-needed clarity into the responsibilities of each actor in the complex and diverse data value chain.

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<sup>1</sup> For more information, please visit [www.egdf.eu](http://www.egdf.eu)

<sup>2</sup> ISFE Key Facts 2020 from GameTrack Data by Ipsos MORI and commissioned by ISFE <https://www.isfe.eu/data-key-facts/>

<sup>3</sup> European Games Industry in 2018:  
<http://www.egdf.eu/wp-content/uploads/2020/08/European-Report-on-the-Game-Development-Industry-in-2018.pdf>

### **A controller should be in charge**

EGDF warmly welcomes the fact that the guidelines underline the responsibility of the processor to follow guidance coming from controllers. The service providers must design their SDKs in a way that provides controllers with a possibility to turn off certain features if they wish to do so for data protection reasons. Furthermore, it would be useful for EDPB to remind that a processor or sub-processor cannot transform itself to a controller or join-controller without significant changes in both contractual and factual relationship with the original data controller.

### **Acknowledging the power imbalances in the data value chain**

Currently, the EDPB guidelines start from the assumption that agreements between joint controllers or a processor and a controller, would actually be negotiated. In reality, this rarely is the case. Quite often, a global service provider giant uses non-negotiable standard contract terms that a small European game developer cannot negotiate or ask for more information about.

Consequently, it would be highly helpful if the EDPB would recommend that a contract should also designate contact points for other contractual parties, not just data subjects. Often big global conglomerate uses standard non-negotiable contract terms that determine their role either as a processor or joint-controller. In that case they should also have a responsibility to reply to inquiries for clarifications send by the small European SMEs they have a processor or a joint controller agreement with (e.g regarding how to answer requests send by data subject).

### **More guidance for corporate groups**

More and more data processing happens inside complex international corporate structures. Public initiatives like the Data Spaces planned under the European Strategy for Data or the OECD proposal for digital taxation strengthen this trend. Consequently, the guidelines must provide more clarity on how personal data should be processed in an international corporate group, especially when it comes to continuous access to the same data, for example, through shared platform tools.

### **List of approved sub-processors might create unnecessary burden**

As acknowledge by EDPB, the data value chains are becoming increasingly complex as more and more actors and chains of sub-processors are participating in the data processing activities. More administrative burden there is for changing digital service providers (e.g. cloud services), less competition there will be on the European digital single market area. Consequently, the EDPB should first address general authorisation as a default solution (paragraph 152) and address specific authorisation (paragraphs 149-151) as a secondary solution for some particular cases.

Furthermore, as especially when general authorisation is used, EDPB should be very clear about the fact that there is no need for a controller to keep an up to date list of all the sub-processors of their processors. Instead, this information should be available on-demand basis.

**For more information, please contact**

**Jari-Pekka Kaleva**

**COO, EGDF**

jari-pekka.kaleva@egdf.eu

+358 40 716 3640

[www.egdf.eu](http://www.egdf.eu)