

To: EDPB

From: Bartolome Martin

Re: Guide 7/2020 on the concept of controller and processor

Madrid, 21 September 2020

Dear Sirs,

I am very pleased to submit to your kind consideration my comments on the recently published set of guidelines on the concepts of controller and processor.

I have one comment only relating to section 1.4 [“Instructions infringing data protection law”](#) (pg. 38 by the end and 39).

In this section, the EDPB clarifies that, according to art. 28.3 of the GDPR, *“the processor must immediately inform the controller if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions.”*

However, article 28.3 refers for this obligation to letter h) only. The GDPR reads: *“With regard to point (h) of the first subparagraph, the processor shall immediately inform the controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.”* (Underlined entered by us)

Expanding the scope of this obligation to all instructions received from the controller involves imposing a supervisory role to the processor on the controller, which appears to be disproportionate and clearly different to that awarded to processors by the legislator.

I hope that the above proves of some help. Thank you very much.

Kind regards,

A handwritten signature in blue ink that reads "Bartolomé Martín". The signature is written in a cursive style and is underlined with a single horizontal line.

Bartolomé Martín