

To Whom It May Concern,

The issued guidelines do not answer to a very common problem that emerges very often in everyday work and which I truly believe deserves a proper clarification.

The guidelines illustrate what happens when: 1) a data processor does not respect the instructions given by the data controller in the contract that regulates their relationship or in the specific instrument of appointment as data processor, 2) data controller and data processor do not reach any agreement for the data processing activities, the instructions or their role of controller/processor, but they do not examine 3) *the possibility that the processor do not accept the instructions of the controller, even though there is an already existing contract that establishes the role of controller/processor in the execution of the activities/services regulated by the abovementioned contract.*

For example, it may happens that, in an outsourcing contractual relationship, the outsourcer is nominated as data processor in a framework agreement of the outsourced activities (accepted by both parties), but when it comes to negotiate and set out the detailed obligations of both controller and processor (and the instruction that the latter has to respect) in a specific contract/act of nominee, the outsourcer does not accept the conditions or accepts all of the them but wants to impose further clauses not related to the instructions or its obligations regarding the *purposes* and *means* of the data processing, as for example, a monetary cap to its liability for law infringement (not accepted by the controller).

Thanks in advance for taking into account my contribution.

Leonardo C.

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