

Item	Current version	Proposed revision	Rationale
38-42	<p>In Example 1, both the targeter and the social media provider participate in determining the purpose and means of the processing personal data. This results in the display of the advertisement to the target audience.</p> <p>As far as the determination of purpose is concerned, Company X and the social media provider jointly determine the purpose of the processing, which is to display a specific advertisement to a set of individuals (in this case social media users) who make up the target audience.</p> <p>As far as the determination of means is concerned, the targeter and the social media provider jointly determine the means, which results in the targeting. The targeter participates in the determination of the means by choosing to use the services offered by the social media provider, and by requesting it to target an audience based on certain criteria (i.e. age range, relationship status, timing of display).⁴⁴</p> <p>In doing so, the targeter defines the criteria in accordance with which the targeting takes place and designates the categories of persons whose personal data is to be made use of.</p>	<p>Paragraph to be replaced by:</p> <p>In Example 1, if Company X only specifies the parameters of its intended audience and does not have access to the personal data of the users that are affected, in principle there should be no joint controllership. Indeed, in this case the targeter only performs a natural and residual configuration of the contracted service and does not significantly influence the intended audience. Still, the whole set-up between the targeter and social media provider should be carefully scrutinised.</p> <p>Where the involvement of the targeter in the determination of the intended audience is more complex (e.g., the targeter sends to the social media platform certain data for matching the audience), most likely the targeter will act as joint controller with the social media provider.</p>	<p>The mere fact that the targeter chooses to use the services offered by the social media provider and requests it to target an audience based on certain criteria (i.e. age range, relationship status, timing of display) should not mean necessarily that the targeter participates in the determination of the means. Rather, these actions are "natural" and inherent whenever any type of service is contracted. Indeed, in any contractual framework entailing the provision of services, the involved parties sets out the "shape" and the limits of the service. This should not necessarily trigger the conclusion that the actors are acting in joint controllership. Otherwise, any service contract would trigger a joint controllership between the service provider and the beneficiary, which is of course not the case.</p> <p>Let's take another example:</p> <p>Company X contracts a health clinic for a medical subscription benefiting to top management only. The health clinic offers various subscriptions (Platinum/ Gold/ Silver/ Standard) subject to the number and complexity of the services covered.</p> <p>Following the rationale in the current version of the Guidelines, Company X and the health clinic would act as joint controllers since:</p> <ol style="list-style-type: none"> 1. As far as the determination of purpose is concerned, Company X and the health clinic jointly determine the purpose of the processing, which is to provide specific health services (selected services only) to a specific set of individuals (in this case top management). 2. Company X participates in the determination of the means by choosing to use the services

<p>The social media provider, on the other hand, has decided to process personal data of its users in such a manner to develop the targeting criteria, which it makes available to the targeter.⁴⁵ In order to do so, the social media provider has made certain decisions regarding the essential means of the processing, such as which categories of data shall be processed, which targeting criteria shall be offered and who shall have access (to what types of) personal data that is processed in the context of a particular targeting campaign.⁴⁶</p> <p>The joint control among the targeter and social media provider only extends to those processing operations for which they effectively co-determine the purposes and means. It extends to the processing of personal data resulting from the selection of the relevant targeting criteria and the display of the advertisement to the target audience. It also covers the processing of personal data undertaken by the social media provider to report to the targeter about the results of the targeting campaign. The joint control does not, however, extend to operations involving the processing</p>		<p>offered by the health clinic, and by requesting it to cover certain persons only (top management). For achieving such, the health clinic will process certain data to check the position in Company X (i.e. that the beneficiary is still employee in Company X and has the covered position).</p> <p>3. Also, as stipulated under the contract, the health clinic provides to Company X monthly reports on the number of employees using the subscription in each month. The reports allow Company X to review the utility of the subscription as additional benefit granted to its employees.</p> <p>Still, it is commonly accepted (also under various guides adopted by EDPB/ WP 29 and various national authorities that in the above case the actors act as <i>controllers on their own</i> (and <u>not</u> joint controllers). That is because all “influences” over the processing exercised by Company X are “natural” and inherent to any services agreement.</p> <p>Of course, the things are different where the targeter exercises a more complex influence over the purpose and means of the processing, such as in the CJEU cases cited in the Guidelines. For instance, in <i>Wirtschaftsakademie</i> and <i>Fashion ID</i> cases, the participation of the targeter was much more complex (in the sense that the targeter set out an account and placed a social plug-in on it). By doing so, in those cases the targeter significantly influenced the purpose and means of the processing and therefore it acted in joint controllership with the social media provider.</p>
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	<p>of personal data at other stages occurring before the selection of the relevant targeting criteria or after the targeting and reporting has been completed, and in which the targeter has not participated in determining the purposes and means”.⁴⁷</p> <p>The above analysis remains the same even if the targeter only specifies the parameters of its intended audience and does not have access to the personal data of the users that are affected. Indeed, joint responsibility of several actors for the same processing does not require each of them to have access to the personal data concerned.⁴⁸ The EDPB recalls that actual access to personal data is not a prerequisite for joint responsibility.⁴⁹</p>		
49	<p>The outcome of the balancing exercise will also depend on the presence of additional controls and safeguards. The targeter seeking to rely on legitimate interest should, for its part, make it easy for individuals to express a prior objection to its use of social media for targeting purposes. However, insofar as the targeter does not have any direct interaction with the data subject, the targeter should at least ensure that the</p>	<p>The outcome of the balancing exercise will also depend on the presence of additional controls and safeguards. The targeter seeking to rely on legitimate interest should, for its part, make it easy for individuals to express a prior objection to its use of social media for targeting purposes. However, insofar as the targeter does not have any direct interaction with the data subject, the targeter should at least ensure that the social media platform should provide the</p>	<p>The amendments are self-explanatory.</p>

	<p>social media platform provide the data subject with means to efficiently express their right to prior objection. As joint controllers, the targeter and social media provider should clarify how the individuals' right to object (as well as other rights) will be accommodated in the context of the joint arrangement (see section 6). If the balancing exercise points out that data subject's interests or fundamental rights and freedoms override the legitimate interest of the social media provider and the targeter, the use of Article 6(1)(f) is not possible.</p>	<p>data subject with means to efficiently express their right to prior objection. As joint controllers, the targeter and social media provider should clarify how the individuals' right to object (as well as other rights) will be accommodated in the context of the joint arrangement (see section 6). However, insofar as the targeter does not have any direct interaction with the data subject, the targeter should at least ensure that the social media platform should provide the data subject with means to efficiently express their right to prior objection. If the balancing exercise points out that data subject's interests or fundamental rights and freedoms override the legitimate interest of the social media provider and the targeter, the use of Article 6(1)(f) is not possible.</p>	
<p>Footer - 59</p>	<p>In situations where e-mail addresses are used for direct marketing purposes controllers must also take into account the provisions of Article 13 ePrivacy Directive. The EDPB notes that in the situation where the advertisement would not be displayed on the social media platform, but would be directly sent via a push notification or a direct message to the data subject, Article 13 of the ePrivacy Directive would be applicable. However, in this specific example, consent would not be required, insofar as Article 13(2) states that the electronic</p>	<p>In situations where e-mail addresses are used to send for direct marketing to the user purposes controllers must also take into account the provisions of Article 13 ePrivacy Directive. The EDPB notes that in the situation where the advertisement would not be displayed on the social media platform, and would not be directly sent via a push notification or a direct message to the data subject, Article 13 of the ePrivacy Directive would not be applicable. However, in this specific example, consent would not be required, insofar as Article 13(2) states that the electronic contact details of an existing customer may be used</p>	<p>Firstly, we deem that the EU legislator's intention in relation to Article 13 of the ePrivacy Directive was to protect the data subject from unsolicited marketing sent directly to its electronic mail. This could also be substantiated by reference to the wording of Recital 40 of the ePrivacy Directive: <i>'These forms of unsolicited commercial communications may on the one hand be relatively easy and cheap to send and on the other may impose a burden and/or cost on the recipient'</i>. Therefore, using the e-mail address of the data subjects in a matching process (i.e., used for segmentation purposes) should not be subject to Article 13 of ePrivacy Directive, unless such data are used by the social media platform as a communication channel. Secondly, Article 13 (2) should not apply in this context</p>

	contact details of an existing customer may be used by an entity for “direct marketing of its own similar products or services provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner”	by an entity for “direct marketing of its own similar products or services provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner”	insofar as the the direct marketing is not carried out via the standard channels envisaged by the EU legislator of the ePrivacy Directive (i.e., automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail.
69	The EDPB also recalls that in a case where the consent sought is to be relied upon by multiple (joint) controllers or if the data is to be transferred to or processed by other controllers who wish to rely on the original consent, these organisations should all be named. Insofar as not all joint controllers are known at the moment when the social media provider seeks the consent, the latter will necessarily need to be complemented by further information and consent collected by the website operator embedding the social media plugin (i.e. Thelatesthotnews.com in Example 6)	The EDPB also recalls that in a case where the consent sought is to be relied upon by multiple (joint) controllers or if the data is to be transferred to or processed by other controllers who wish to rely on the original consent, these organisations should all be named, or, at least, be categorized by industry. Insofar as not all (joint) controllers are known at the moment when the social media provider seeks the consent, the latter will necessarily need to be complemented by further information and consent collected by the website operator embedding the social media plugin (i.e. Thelatesthotnews.com in Example 6). No such complementation of consent should be however needed where the targeter does not have access to the users’ data.	Regularly updating the data subject with every occasion when a new partner/client uses the services provided by social media platform could lead to information and consent fatigue. Therefore, a category-based approach would be more suitable to the data subject’s needs. As for the targeter’s need to complement consent, this should work only where targeter wishes to integrate on their website specific social media business tools or features, such as social plugins or logins or using APIs/ SDKs offered by social media providers (see Example 6). No such complementation of consent should be however needed or even feasible where the targeter does not have access to the users’ data.
89 – para 2	- Where the profiling undertaken by the social media provider is likely to have a “similarly significant [effect]” on a data subject, Article 22 shall be applicable. An assessment as to whether targeting will “similarly significantly [effect]” a data subject will need to be conducted by the controller (or joint controllers, as the case may be) in each instance with	Where the profiling undertaken by the social media provider is likely to have a “similarly significant [effect]” on a data subject, Article 22 shall be applicable. An assessment as to whether targeting will “similarly significantly [effect]” a data subject will need to be conducted by the social media provider controller (or joint controllers, as the case may be) in each	Just to clarify that in the given example the social media provider should ensure that the development of the targeting criteria does not have a significant effect on a data subject, since it is the only one having the means to assess and understand the interests and behaviour of the data subjects.

	reference to the specific facts of the targeting.	instance with reference to the specific facts of the targeting.	
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