

ISFE Comments on the EDPB's Guidelines on the Concepts of Controller and Processor - Public Consultation

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1. The Interactive Software Federation of Europe (ISFE) represents the European video games industry. ISFE's membership comprises national trade associations in 15 countries throughout Europe which represent in turn hundreds of games companies at national level. ISFE also has as direct members the leading European and international publishers, many of which have studios with a strong European footprint, that produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and the Internet.
2. ISFE welcomes the opportunity to provide comments on the draft guidelines 07/2020 on the concepts of controller and processor in the GDPR. These guidelines will be of great value to our sector and help companies identifying responsibilities and allocating liabilities in increasingly complex data processing environments in which the multiplication of controllers, processors and third parties may lead to contradicting responsibilities and legal uncertainty.
3. While the guidelines include examples of complex corporate structures involving different processing operations which take place simultaneously or in subsequent stages, ISFE still feels that there is a lack of clear examples that illustrate the cases where multinational organisations (particularly for a group of global companies) would share the same infrastructure and the same datasets as part of a particular service. The examples in paragraphs 69 in which a group of companies cannot access each other's data and in paragraph 87 where one company in a group transfers data to its parent company on request, do not fully cover situations in which a group of companies have continuous access to the same data in the context of shared platform tools. Such situations are for instance quite common for cloud-based providers of IT solutions and office management services.
4. ISFE would also like to call for more clarity on the consequences of joint controllership when the processing is necessary for the performance of a contract to which one of the controllers is party. It is unclear which legal basis the other controller would be able to invoke in order to allow for the processing that is required for the performance of that specific contract. This particularly holds true in the deliverance of advertising which

typically involves at minimum 3 or 4 parties who all share the same processing purpose and would therefore qualify for joint controllership. We would welcome clearer guidance from the EDPB in this matter.

5. Finally, ISFE would like to caution that the requirement for processors in paragraph 148 to compile a list of intended sub-processors, including information about their tasks and proof of the safeguards that have been implemented, for a data controller to authorise or object to new subcontracting parties will be difficult to implement. As was acknowledged by the EDPB in paragraph 147, data processing activities are often carried out by a great number of actors, and chains of sub-processors are becoming increasingly complex. The mere use of third party hosted tools in which personal data is held will require these parties to be considered as sub-processors and be featured in this list. The requirement to maintain such a list and keep it updated will place a heavy administrative burden on the processor, especially as third party hosted processing tools may change frequently.

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