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European Data Protection Board
Rue Wiertz 60
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Dear Madam, dear Sir,

We write to you in the context of the EDPB consultation regarding its **Guidelines 07/2020 on the concepts of controller and processor in the GDPR**.

Based on discussions with colleagues, peers and other organisations, we wish to share thoughts on a few examples of points that could be added or clarified.

1. “Service reseller” scenario

The Guidelines discuss various scenarios to assist organisations in choosing criteria to determine their role. They do not appear, however, to examine a frequently encountered scenario, the “service reseller” scenario, where **one company is reselling to its customer services that are in reality provided by a third party**. Given its widespread applicability, we believe it would be of interest to many organisations to see the Guidelines include some considerations in relation thereto.

This “service reseller” scenario typically takes the following form:

- “Company A” provides various services but not “services X”;
- The nature of services X is such that the service provider is always deemed to be a processor;
- “Company B” provides services X;
- Company A offers to its customer various services that include services X;
- Company B acts as subcontractor for company A and provides services X to the customer – but there is no contractual relationship between the customer and company B;
- Company A is not involved in the provision by the customer to company B of personal data necessary for services X, nor is it involved in the actual processing of that personal data (or more broadly performance of services X);
- Company A does not have access to the personal data processed in the context of services X.

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In such a situation:

- Does the EDPB consider that company A acts as processor (for the customer as controller) and company B as sub-processor, despite company A's lack of access to (or processing of) the personal data?
- Would the EDPB instead consider company A not to be involved in the processing (and thus neither controller nor processor) if a data processing agreement is signed between company B and the customer (e.g. through a power of attorney given to company A by company B or the customer)?
- Does the EDPB see any other classification of the roles of the parties?

Note: In the context of this contractual relationship, company A may be led to process personal data regarding its customer (or the customer's representatives) for e.g. billing and customer management purposes. These processing activities are not part of the scope of the above questions.

2. Confidentiality for persons authorised to process personal data

According to the GDPR, the processor must ensure that the persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

In section 121 of the Guidelines, the EDPB states that this obligation of confidentiality "*must be sufficiently broad so as to encompass all the personal data processed on behalf of the controller as well as the details concerning the relationship*".

By "*the details concerning the relationship*", does the EDPB mean "*the output of the processing activities*", "*the existence of the relationship*" or something in between? Are we correct in assuming that it is not the EDPB's intention to use data protection as a means of preventing processors from "name-dropping" the controller and describing the services provided, e.g. in the context of business development and marketing initiatives?

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We thank you for considering these points and remain at your disposal for any clarification you may require.

Yours faithfully,

Peter Craddock