

Comments of Telia Company on EDPB draft Guidelines 01/2021 on Data Breach Notification

Telia Company welcomes the opportunity to comment on EDPB draft Guidelines 01/2021 on Examples regarding Data Breach Notification.

Telia Company appreciates the practical and clear examples in the draft Guidelines which guide and instruct the actors in the risk assessment and threshold level evaluations in regard to the personal data breach notifications.

Furthermore, Telia Company as a telecommunications operator would highly appreciate additional guidance and possible examples regarding to which supervisory authority to report personal data breaches which may also have a connection to the provision of public communications services, when there are separate national authorities responsible for ePrivacy legislation and GDPR. This further guidance would be necessary in the light of the recent EDPB Opinion 5/2019 on the interplay between the ePrivacy Directive and the GDPR, in particular regarding the competence, tasks and powers of data protection authorities.¹

The current trend especially in the Nordic countries seems to indicate that the criteria of the cases having “a connection with the provision of a publicly available electronic communications service” in accordance with ePrivacy legislation is interpreted widely, thus these personal data breaches are reported primarily to the national regulatory telecom authority. In practise, this interpretation may lead to a situation, where telecommunication operators report all or majority of personal data breaches either 1) primarily to the national regulatory telecom authority or 2) to both authorities; the national regulatory telecom authority and data protection authority being the supervisory authority under GDPR. The latter would clearly be against the spirit of EDPB Opinion 5/2019 on the interplay between the ePrivacy Directive and the GDPR. Still some recent case law may point to that direction.²

Practical example: National regulatory telecom authorities in some Nordic countries currently interpret that phone bills, which include call details, are *items in connection with the electronic communications service*, thus personal data breaches like sending a phone bill by email to a wrong customer, shall be reported to the national regulatory telecom authority. This even if the bill as such does not include any traffic data directly from telecommunications networks but is a static copy of some call details' records.

This practical issue has been touched upon in the case example 17 of the draft Guidelines 01/2021. In the case example 17, the similar event, where billing information about the usage of telecommunication services is sent to a wrong email address, constituting a personal data breach, shall be reported to data protection supervisory authority. This example is bound to create confusion among telecommunication operators, especially considering the EDPB Opinion 5/2019. Therefore, Telia Company kindly requests further instructions from EDPB to clarify which kind of cases the telecommunication operators shall report only to the national regulatory telecom authority in accordance with the ePrivacy legislation; and when it is sufficient to report to the data protection authority only.

Sincerely yours,
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Director of DPO Office
on behalf of Telia Company

¹ According to the EDPB Opinion 5/2019 page 15 para 44: “Clearly, an obligation to notify under both acts, once in compliance with the GDPR and once in compliance with national ePrivacy legislation would constitute an added burden without immediate apparent benefits for data protection. Following article 95 of the GDPR, the electronic communications service providers who have notified a personal data breach in compliance with applicable national ePrivacy legislation are not required to separately notify data protection authorities of the same breach pursuant to article 33 of the GDPR.”

² https://edpb.europa.eu/news/national-news/2021/norwegian-dpa-issues-reprimand-telenor-inadequate-protection-personal-data_en