



## **Comments to the Guidelines 07/2020 on the concepts of controller and processor in the GDPR**

We welcome the fact that the European Data Protection Board (“EDPB”) has provided illustrative examples regarding scientific research in the Guidelines. However, due to the complexity of both the GDPR and the circumstances in which scientific research is conducted, there are still uncertainties regarding data controllership in research. These uncertainties have resulted in different interpretations among universities and other institutions of higher education and research in the EU. Therefore, we would like the EDPB to provide additional guidance or examples concerning certain topics in the Guidelines (or, if in the EDPB’s these topics are too specific to be included in Guidelines intended for all controllers and processors, future Guidelines concerning higher education and scientific research).

### **1 University theses and dissertations**

In discussions with other European universities, we have noticed that there are different interpretations of controllership in research conducted for a bachelor’s or master’s thesis or a doctoral dissertation when the authoring student is not employed by the university. What complicates this question is that the circumstances of research for a thesis and the university’s ability to direct and monitor the student’s work may vary greatly depending on the university and the branch of science. Some students may work on their thesis very independently with minimal instruction from their supervisor, using their own computer at home, whereas other students may receive a lot of guidance from their supervisor, conduct the research at the university’s facilities, or their research may even be a part of a larger research project. It is also possible that the student has multiple advisors or supervisors from different organisations, particularly in doctoral dissertations. Due to the lack of an employment relationship, the university does not have a legal right to direct the student to the same extent as its employees.

### **2 Affiliated researchers not employed by the university**

There are also other researchers affiliated with but not employed by universities. These include researchers with grants that have been paid to them personally by external funders, and researchers who have been granted certain academic titles (such as the title of Docent in some Northern European countries). These researchers may use the university’s facilities and act as principal investigators. However, like in the above example about students, the university does not have the same degree of control over these researchers as it does over its employees. Researchers with personal grants may also transfer to a different university and take their grant and incomplete research with them, in which case the personal data is transferred to another



controller if the controller is the university, but stays with the same controller if the controller is the researcher.

### **3 Joint controllers in research projects**

The Guidelines feature two examples about joint controllership in research. One example illustrates that research institutes in a joint project may be joint controllers for processing and disclosing of data on a shared platform, while remaining independent controllers for other processing carried out outside the platform for their respective purposes. Another example illustrates that the parties in a clinical trial are joint controllers if “they collaborate together to the drafting of the study protocol (i.e. purpose, methodology/design of the study, data to be collected, subject exclusion/inclusion criteria, database reuse (where relevant) etc.)”. We would like to receive more guidance from the EDPB about drawing the line between joint controllership and independent controllers in joint research projects, especially considering what is stated about converging decisions in paragraph 53 of the Guidelines.

We welcome any guidance from the EDPB regarding data protection in scientific research and higher education, and would be happy to participate in any public consultations concerning these matters.