

Rome, March 27th, 2018

European Commission

Article 29 Data Protection Working Party

Brussels Belgium

Dear Members of the Article 29 Data Protection Working Party,

Lex Digital is an association and research center actively engaged in dissemination and research activities on data protection issues.

Members of our executive team are, or have been, active members and researchers of international research projects focusing on data protection and privacy. We are pleased to contribute to your public consultation on the implementation of Articles 42 and 43 GDPR, and will leverage our personal and collective experiences in the hope that it will contribute to support an optimal implementation of the GDPR.

We would like to share the following considerations to enrich and complement the current document:

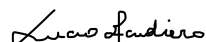
- A. The GDPR will have massive and cross domain implications, concerning a large diversity of risks, that may be very domain-specific. Areas such as data analytics, biogenetics, Internet of Things require specific certification schemes in order to properly assess conformity with the GDPR. Therefore, we encourage the European Data Protection Board to take into account these complex realities and to favor the diversity of certification schemes, while ensuring that each certification scheme convey a clear and reliable indication on the level of compliance with the GDPR obligations.
- B. In order to favor and advance the digital single market and also to support the principle of mutual recognition among Member States, we recommend to consider the inclusion of the following principles in your guidelines:
 - ✓ By default, any certification scheme recognized by one of the European Data Protection Authorities should be automatically recognized by all the other EU members States. In case of disagreement on the validity of a certification scheme, the European Data Protection Board could take care of assessing the scheme on the basis of clear, impartial, and balanced principles;
 - ✓ As some countries may adopt complementary data protection regulations, the European Data Protection Board should identify, provide and maintain on its website an exhaustive list of the specific national obligations that complement the GDPR.
- C. We suggest to provide clear guidance on the debated issue of the certification of competences, in order to avoid a scattered implementation of the GDPR with regards to the rules on the Data Protection Officers (“**DPOs**”). The GDPR does not explicitly provide

for certification of competences as it does for processes; this notwithstanding, some Member States (e.g. Spain) have opted for the introduction of certification schemes to certify the DPOs, whereas in other Member States initiatives in the same direction are steered by private entities, despite the contrary clear view expressed by the local Supervisory Authority (e.g. Italy). We believe that the competence and professionalism of the DPOs should not be certifiable, and we would rather suggest to look at that issue from a different viewpoint. As the DPO shall have a general knowledge of data protection law and practices, and a “vertical” competence in the domain in which he/she is deployed, we believe that the role would find a more proper definition in the codes of conduct provided for by Article 40, as they are domain specific and would necessary entail framing the DPO into the elements provided for by Article 40, paragraph 2. We therefore suggest that the European Data Protection Board encourage this view while taking a clearer stance at EU level on the certification issue.

We thank you for your kind consideration and remain available for any further clarifications. Please accept the assurance of our highest consideration and our full support.

Yours sincerely,

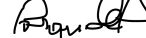
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