



european association
of data protection
professionals

23 April 2021

To the European Data Protection Board
Brussels

**Feedback of the European Association of Data Protection Professionals (EADPP) on the
Guidelines 02/2021 on Virtual Voice Assistants**

Dear Sirs,

The European Association of Data Protection Professionals (EADPP) hereby provides its feedback pursuant to the above published initiative.

The primary aim of the EADPP is to facilitate, organise, structure, and represent European data protection professionals based on European perspectives and the principles of the GDPR.

For any information or clarification in relation to our feedback, please contact Ms. Maria Raphael, Chair of EADPP at the email address chair@eadpp.eu.

**Guidelines 02/2021 on Virtual Voice Assistants
Adopted on 9 March 2021, Version 1.0**

1. TECHNOLOGY BACKGROUND

1	Section 2.3 Par.16(1) and (2) <i>Step-by ste- Description</i>	It is not the norm that the VVA requires a specific wake-up expression. Some VVAs available on the market respond to users' requests without requiring a prior specific wake-up expression, for example by holding their smart watch near their mouth and saying directly the command/request.
2	Section 2.4 Paras 17, 18 and 19 <i>Wake-up expressions</i>	We refer to our comment above in relation to VVAs available on the market that respond to user's request without requiring a prior specific-wake up expression. We hereby invite EDPB to refer to VVAs with this functionality when discussing the technology background of VVAs and touch upon the privacy issues that arise out of this functionality.



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3	Section 2.5. Par 23 <i>Voice-snippets and machine learning</i>	Digital labor platforms represent a fundamentally new model which allows business processes to be outsourced. In addition to questions being raised about working conditions and safety, it is, in the context of the proposed Guidelines, important to emphasize the data protection issues that arise out of the digital labor, such as the low level of awareness of workers in their data subject rights and the lack of appropriate safeguards in international data transfers between VVA designers and subcontractors.
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3. ELEMENTS OF DATA PROTECTION

4	Section 3.1. Par 29 <i>Legal framework</i>	The guidance of EDPB in relation to the purposes for which the data of non-registered users data may be processed and the associated legal bases for this processing is ambiguous. The only reference of EDPB in relation to non-registered users data is that: <i>"Consequently, data controllers should only process non-registered users data to execute their requests."</i> However, it is not clarified whether the data of non-registered users can be processed for other purposes i.e. for the storing or gaining of access to information if and when their consent is provided as per Article 5(3) of the e-Privacy Directive. Article 5(3) of the e-Privacy Directive does not differentiate between registered and non-registered users when allowing such processing after the receipt of informed prior consent.
5	Section 3.1. Par 30 <i>Legal framework</i>	We are not in agreement with EDPB's guidance that in case the controllers become aware of accidental audio capturing of the individuals who did not intend to use a VVA service, they should verify that there is a valid legal basis for each purpose of processing of such data. In case of accidentally audio capturing, the controllers shall consider that no legal basis exists and proceed immediately to the deletion of the accidentally captured data. In our view, the compatibility test of art. 6(3)4 of the GDPR may not, in any case, lead in identifying or providing legal basis for the processing of the accidentally captured data since users consent to the processing (storing and gaining of access of information) of intentionally shared personal data and their consent naturally and strictly covers such data. The compatibility test of art. 6(3)4 of the GDPR may only be applied for personal data that the user has consented to be processed for the purpose above and only in that case the data controller may ascertain whether processing for any other purpose is compatible with the purpose for which the personal data were initially collected. All common and foreseeable purposes for processing personal data by VVAs mentioned in para. 67 of the guidelines may be applicable only for intentionally shared data.

		Taking into account the above, we recommend EADPP to incorporate the above into the guidelines and emphasize that the accidentally collected data should be immediately deleted and be processed.
6	Section 3.2.1 Par 37 <i>Processing of personal data</i>	As of the fact that the VVAs always listen and the EDPB acknowledges that in some cases the VVA may accidentally capture data, we propose to amend the text of the last sentence as follows: "Besides these two categories of data subjects, there is a third one: accidental users who, registered or not, unknowingly make requests to the VVA (e.g. saying the correct wake-up expression without knowing the VVA is active, or saying other words that are mistakenly identified by the VVA as the wake-up expression) or for any other reason, unknowingly being listed to and recorded ".
7	Section 3.2.2 Par.46 <i>Processing by data controllers and processors</i>	Currently, the majority of data controllers providing VVA services and their processors, are organisations established outside the EU/EEA, which may transfer VVA user data to third countries even though their remote VVA servers may be located in the EU/EEA. The clear identification of the transfers to third countries between the data controllers and processors is highly relevant to the application of the measures that supplement transfer mechanisms to ensure compliance with the EU level of protection of personal data.
		We propose to add particular examples of third country data transfers.
8	Section.3.3. Par. 59 <i>Transparency</i>	We invite EDPB to guide VVAs on how they can inform non-registered users and accidental VVA users.
9	Section 3.4.3 <i>User identification (user data)</i>	In order to prevent the accidental capturing of data from non-registered users who did not submit a request to the VVA, it is required that the appropriate technical and organisational measures are taken so that the VVA properly distinguishes between a registered user/non-registered user submitting a request to the VVA and a non-registered user who did not intend for her/his data to be captured.
10	Section 3.5. Par 94 <i>Processing of children's data</i>	To protect children's data and to ensure effective parental control, the following recommendations may be included in the Guidelines: - setup a minimum age in the conditions for the creation of profiles - the profile may link to a parental account able to provide the necessary permissions - whenever possible, suggestive icons may be used to make children aware of the features - to refrain from the use of children data for advertising and marketing purposes

11	Section 3.9. Par 139 <i>Data minimization</i>	In order to fulfill basic requirements on Data protection by design and by default and to prevent the extensive collection of third parties' personal data and related processing, we propose to amend the text of the paragraph as follows: <i>"In order to avoid recording background voices and situational information, VVA service providers should apply automated background-noise filtering <u>on the local device.</u>"</i>
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Your sincerely,


Maria Raphael
Chair of the Board
On behalf of the EADPP Board

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