Public Consultation on the EDPB's template for personal data breach notification

Response from VIDEO GAMES EUROPE

1. Video Games Europe welcomes the opportunity to provide comments on the template for personal data breach notification which was adopted by the European Data Protection Board (EDPB) for public consultation. Our members welcome the issuing of ready-to-use templates to foster a European notification solution, easing the burden on organisations. Such templates promote a common understanding of the European data protection framework and provide a harmonised interpretation of key provisions in the GDPR. This will help to ensure an effective and meaningful implementation of the GPDR.

2. Overall, we are concerned that the draft template contains a high number of information fields that companies would be required to complete. This could create unnecessary administrative burden and may oblige companies to disclose sensitive technical and operational information which goes largely beyond what is necessary for a data breach notification under Article 33.3 GDPR. The existing notification templates from data protection authorities in France, Spain or Ireland are only about 1/3 of the size of the EDPB proposal. Such a lengthy notification template does not align with the EDPB's Helsinki Statement on Enhanced Clarity, Support and Engagement which commits to a common template as a new tool to help make GDPR compliance easier.

3. We also recommend that the template would accommodate for situations whereby it is not possible to have all the necessary information concerning a breach within 72 hours of becoming aware of it. Full and comprehensive details of an incident may not always be available during this initial period. Article 33.4 GDPR allows the controller to provide the necessary information in phases. This may sometimes happen in complex cases where the initial fact-finding exercise has only led to information that is somewhat approximative and high-level. Similarly, where companies are asked to demonstrate liability for accuracy of information in field 26, it should be clarified that this should not go beyond reasonable knowledge of such information.

4. The draft template should not require providing highly technical information that may raise security or confidentiality concerns as this information may be protected under the trade secrets directive. This applies in particular to field 63 which requires a description of the systems, software, services, and infrastructures and to field 125 where details related to cyber-incidents (including ransomware-notes and phishing messages) are requested. Where the provision of

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such information would be effectively needed, data protection authorities should provide legal and practical guarantees that the data is fully protected.

5. Field 87 requires organizations to indicate the severity of a potential impact. In line with the EDPB Guidelines 09/2022 on personal data breach notification in the GDPR, Video Games Europe recommends to refer in this context to the ENISA recommendations for a methodology of the assessment of severity of personal data breaches. They provide for a practical tool for a data breach severity assessment that can be used by data controllers.

6. Video Games Europe recommends that the template specifies a retention period for notification data, consistent with minimization and storage-limitation principles, and that its relationship with templates by national authorities is clarified. The use of a single EU-level notification template would substantially reduce the burden on companies and is clearly preferred. Finally, it would also be important to include completed mock-up examples in the text and take account of pending legislation such as the Digital Omnibus which may impact the requestion information fields.

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About Video Games Europe

Since 1998, Video Games Europe has ensured that the voice of a responsible video games ecosystem is heard and understood. Its mission is to support and celebrate the sector's creative and economic potential and to ensure that players around the world enjoy the benefits of great video game playing experiences. Europe's video games sector is worth €26.8bn and accounts for 116,419 jobs. 54% of Europeans are video game players. We publish a yearly Key Facts report with the latest data on Europe's video games sector.

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