

Public consultation on: Guidelines 09/2022 on personal data breach notification under GDPR

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*(*The comments below represent exclusively the personal point of view of the author)*

The Guidelines in question represent a fundamental tool in order to pre-assess and evaluate the potential scenarios in relation to personal data breaches under GDPR.

The Guidelines, indeed, cover all the main points of a personal data breach notification under GDPR by providing useful suggestions and instructions in theory and in practice.

Obviously, it will depend a by case-by case approach and it will be necessary time in order to see the development of the cases and the interpretation of scenarios occurring.

One of the most interesting issue, it is the potential conflict with third country legal requirements. In some cases of cross-border breaches, such as when it is suspected that a breach was caused by criminal activity, law enforcement requirements of third countries may restrict disclosure of the breach and its details.

This can create legal conflicts for data controllers, who may be expected by third country law enforcement authorities not to disclose the breach while they are conducting an investigation, while at the same time controllers are under an obligation to notify it to a Data Protection Authority.

Recital 88 of GDPR grants some flexibility in this regard, as it states that notification of a breach should take into account “the legitimate interest of law –enforcement authorities where early disclosure could unnecessarily hamper the investigation of the circumstances of a personal data breach”.

Therefore, it will be interesting to discover the future cases regarding this specific issue, as a large number of big multinationals around the world could face it, potentially.

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