I welcome the EDPB's effort to bring consistency to the choice between administrative fines and other corrective powers. As a DPO advising public and private organisations, I would like to offer three comments.

1. The role of the Data Protection Officer and the risk of a perverse incentive. Paragraph 50 states that mere doubts about the legality of a processing operation may already be considered gross negligence, and Example 4 treats legal advice that acknowledges opposing views as evidence of awareness. The task of the DPO under Articles 38 and 39 GDPR is precisely to identify and record such doubts and to advise the controller. If a DPO's documented advice flagging a risk becomes, in itself, evidence of gross negligence, organisations may be discouraged from involving the DPO properly, from documenting their assessments, or from seeking advice at all. This would run counter to the accountability principle in Article 5(2) and to Article 38(1). We respectfully suggest that the Guidelines clarify that a documented risk assessment, including the DPO's advice, together with the measures adopted in response to it, should be weighed as a whole, and that the mere recording of doubts in the course of a diligent internal assessment should not, by itself, be treated as an aggravating element. The DPO is mentioned only once in the draft (paragraph 78); a more explicit treatment of the DPO's involvement would be welcome.

2. Legal certainty regarding paragraph 50. The statement that "where EDPB Guidelines exist, an error is always to be considered avoidable" is formulated in absolute terms. EDPB Guidelines are not legally binding, may be revised, and are sometimes adopted in draft form for consultation. We suggest clarifying that this applies to final Guidelines in force at the time of the conduct, and that the assessment may take into account situations where the competent national supervisory authority had publicly expressed a different position.

3. Distinguishing isolated failures from structural neglect. Paragraph 75 asks whether the controller "did what it could be expected to do", while paragraph 77 limits the mitigating effect of existing measures to exceptional circumstances. We do not suggest rewarding ordinary compliance. We suggest that, consistently with paragraph 72 and with the logic of Example 10, the Guidelines distinguish more clearly between an isolated failure within an organisation with a functioning, documented compliance programme and an infringement resulting from the absence of any such programme.

I believe these clarifications would strengthen the accountability principle and support fair, consistent and dissuasive enforcement.