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Date	Subject	Reference
27 februari 2025	Public consultation Guideline 01/2025 on Pseudonymisation	-

Dear Mrs. Talus,

Please find below PMP | Privacy Management Partners' response to the draft EDPB Guidelines 01/2025 on pseudonymization. As PMP, we have read the guidelines with interest, and we are happy to share our observations with you.

We conclude that the guidelines correctly mentions that pseudonymization can be an effective measure. However, the guidelines also fall short in some respects.

First, we observe that the guidelines rely heavily on the position of the EDPS in the C-413/23 P case (*EDPV v SRB*), which was rejected by the General Court. If the CJEU on appeal would agree with the General Court that the EDPS' position must be rejected, the guidelines will immediately lose much of their practical applicability.

On February 6, 2024, Attorney General Spielmann's opinion on the case was published. He too notes that the EDPS position cannot be upheld.

For practitioners, the distinction of when information is personal data or not, is already a very complicated question. In *Breyer*, the CJEU give us the conditions for anonymity. In the C-413/23 P ruling, the CJEU will – hopefully – provide more clarity on the concept of pseudonymized data in relation to the definition of personal data and the conditions for anonymity. This ruling will likely provide a bit more comfort to our clients, many of which process pseudonymized data. Publishing a final version of the guidelines ahead of the CJEU's ruling will create confusion, especially if the CJEU follows the Attorney-General's opinion on the EDPS's position. **We therefore recommend that the EDPB does not publish a final version of the guideline ahead of the CJEU ruling. And we strongly recommend that the guidelines will duly take account of the outcome in this case.**



As for the content of the guidelines, we would like to share the following observations:

Contextual integrity

The explanation of the context in which information is processed is an important element of whether such information qualifies as personal data. As the A-G also notes in his Opinion, pseudonymized data can therefore be either personal data or anonymous data. The Guidelines are based on the premise that pseudonymous data is never anonymous as long as the additional data exist, so there is always a risk that data can be traced to an identified individual.

PMP believes that the risk of traceability depends on the context and the method of pseudonymization. One cannot come to the conclusion that pseudonymous data is personal data until one has examined the context of the processing to a sufficient degree. This involves looking at:

- what form of pseudonymization was used;
- which organizational or legal safeguards exist;
- the purposes of the processing, which may or may not require or reasonably involve the likelihood to link pseudonymous data to an individual. E.g., many applications of pseudonymized data involve drawing aggregated conclusions about various groups in the data, rather than drawing conclusions on or taking decision against individuals; and
- the number of people that have access to the pseudonymous data. E.g., if the data are disclosed to the public, the data should be regarded as personal data.

We are happy to clarify this letter further, so feel free to contact us.

With kind regards,

Jeroen Terstegge

Managing Partner

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