

Letters



Moritz Körner
Member of the European Parliament

By e-mail only

Brussels, 7 July 2023
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Dear Mr Körner,

Thank you for your letter of 09 November 2022 as regards your concerns on the new ‘private relay’ function designed by Apple and its interaction with Article 25 GDPR.

The European Data Protection Board (EDPB) is an independent European body, which contributes to the consistent application of data protection rules throughout the European Union, and promotes cooperation between the EU data protection authorities. Thus, the following analysis is focused entirely on the application of the GDPR.

Article 25 GDPR provides for data protection by design and by default. This requires data controllers to have data protection designed into the processing of personal data and applied throughout the processing lifecycle. As a technology neutral legislation, GDPR does not imply any specific requirement in order to fulfil the conditions of its Article 25. Data controllers are accountable for choosing appropriate measures, given the circumstances for the specific processing. Hence, they are obliged to apply technical and organisational measures according to the principles of data protection by design and by default, while the choice of the concrete measures remains at their discretion.

The EDPB welcomes initiatives by controllers and providers of telecommunication services to minimise data processing in the course of the provision of their services, and limit the risks to the rights and freedoms of natural persons, regardless of whether they are intended to fulfil applicable requirements to implement data protection by design and default, or go beyond legal requirements. Obviously, those initiatives should not interfere with other legal obligations of the entities implementing them, nor should they introduce new risks that exceed the ones they intend to mitigate.

You have conveyed to the EDPB the concern of European network carriers that the private relay function introduced by Apple would prevent them from fulfilling their obligations under current legislative acts. Considering the available information the EDPB is not in the position to assess the fulfilment of any obligations that might be impeded by the implementation of a technical arrangement designed to encrypt and divert traffic via different proxy servers. In principle, neither the provisions

of the ePrivacy Directive, nor those of the GDPR affect or impede the fulfilment of legal obligations of controllers and providers of telecommunication services.

In fact, if controllers use new technology when processing personal data it raises specific obligations for controllers for example when the processing of personal data may carry high risk to the rights and freedoms of natural persons, to conduct a data protection impact assessment in line with Article 35 of the GDPR, and, when necessary, shall consult the competent supervisory authority prior to the commencement of processing of personal data in line with Article 36 of the GDPR.

Yours sincerely,

Anu Talus