

Brussels,  
Ares(2018)

Dear Ms Rabmer-Koller,

Dear Ms Kraus-Winkler,

Dear Mr Leitl,

Thank you for your joint letter of 14 May 2018, by which you ask me on behalf of your associations to recommend Member States and the national data protection authorities to invest in support of and advice to SMEs and to commit, during the first year of the application of the General Data Protection Regulation (GDPR), to not immediately imposing fines in case of infringements of the data protection rules.

First of all let me stress that since 25 May 2018 the General Data Protection Regulation with all its provisions is fully applicable, after a transitional phase of two years which was meant to allow controllers, including SMEs, to adapt their technical and organisational measures to the rules of that Regulation. Since the Regulation did not substantially change the core concepts and principles of the data protection legislation put in place back in 1995, the vast majority of controllers and processors, provided that they are already in compliance with the existing EU data protection laws, will not need to make major changes to their data processing operations to comply with the Regulation.

The Regulation impacts most on operators whose core business is data processing and/or dealing with sensitive data. It also impacts on those that regularly and systematically monitor individuals on a large scale. By contrast, operators which do not engage in high risk processing as their core activity will normally not be subject to these specific obligations of the Regulation.

Secondly, the GDPR guarantees that each data protection authority shall act with complete independence in performing its tasks and exercising its powers, and that the members of each supervisory authority shall, in the performance of their tasks and exercise of their powers, remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from anybody. Therefore, neither the European Commission nor Member States are allowed to intervene or recommend them a certain practice for the exercise of the powers by the supervisory authorities.

Ulrike Rabmer-Koller  
UEAPME President

Susanne Kraus-Winkler  
HOTREC President

Christoph Leitl  
Eurochambres President

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The powers of the supervisory authorities for enforcing the GDPR comprise the power to impose an administrative fine, in addition to, or instead of corrective measures, depending on the circumstances of each individual case. The GDPR obliges each supervisory authority to ensure that the imposition of administrative fines shall in each individual case be effective, proportionate and dissuasive.

The GDPR sets out that when deciding whether to impose an administrative fine and deciding on the amount in each individual case, due regard shall be given to a number of criteria, amongst others to the nature, gravity and duration of the infringement, its intentional or negligent character, any relevant previous infringements and any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained.

As regards your reference to support and advice, the task of raising awareness and being the first point of contact for controllers, processors and individuals lies primarily with the data protection authorities. As enforcers of data protection rules in their territory, data protection authorities are also the best placed to explain the changes introduced by the Regulation.

The data protection authorities have started informing stakeholders in line with the specific national approach. Some hold seminars with public administrations, including at regional and local level, and run workshops with different business sectors in order to raise awareness about the main provisions of the Regulation. Some run specific training programmes for data protection officers. Most of them provide information materials in various formats on their websites (checklists, videos, etc.).

The training and awareness raising initiative set in motion by data protection authorities should be continued and intensified. To this end, the Commission has allocated grants to support data protection authorities reaching out to stakeholders, in particular SMEs, by co-financing their awareness-raising activities (for a total envelope of maximum EUR 2 million). These activities will start in the second half of this year and will continue in 2019. We have also issued communication material in all EU languages aimed at businesses, such as 60 Questions and Answers on the GDPR and a simple guide to help small companies who do not have data processing as their core business to comply with the GDPR. We have also prepared a number of publications, including on the opportunities for businesses<sup>1</sup>.

The Commission will also organise an event in May 2019 to gather the initial assessment of the functioning of the GDPR also taking into account the impact on innovation, businesses and SMEs. I count on your contribution to this event.

I trust that these explanations assure you that investment in support and advice to business and in particular SMEs is continuing. The Commission has been and will continue to be an active partner in this endeavour.

Yours sincerely,



Věra Jourová

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<sup>1</sup> [https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules\\_en](https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en)