

Isabelle Falque-Pierrotin
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Re: CCBE Comments on the Guidelines on Data Protection Impact Assessment (DPIA)

Dear Ms Falque-Pierrotin,

We write to you regarding the *Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679* (hereinafter: "**Guidelines**") which were adopted on 4 April 2017 and which are currently open for comments.

The Council of Bars and Law Societies of Europe ([CCBE](#)) represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

With this letter, we would like to give voice to our concern regarding the lack of any practical guidance in the Guidelines regarding what could be a large scale processing of data with regard to specific regulated professions, especially that of lawyers.

Article 35(1) lays down only generic principles as to when processing would be likely to result in a high risk, and even the example set out in Article 35 (3) (c) on "large scale processing" does not provide details that could serve as a helpful aid for legal practitioners. Only recital (91) provides a clear guideline by stating that data processing by an individual lawyer is most probably not something likely to result in a high risk.

Within this context, we had hoped for much greater practical assistance from the WP29 Guidelines. However, the current approach of the Guidelines fails to give that assistance. We are of the view that the wording in the Guidelines could have given more assistance than it currently does.

From the point of view of regulated professionals, the practical provision intended to address this issue in Section 5 on page 8-9 (including footnote 14), is currently restricted to only repeating what is already laid down in the above mentioned provisions of the Regulation. Furthermore, even WP29 Guidelines on Data Protection Officer (16/EN WP 243) in section 2.1.3. sets just the same practical thresholds: "if you are an individual professional, a DPIA (and a DPO) is not a requirement. In all other cases, this requirement might apply."

Most European lawyers work in small law firms having less than 5 lawyers, but a majority of such lawyers are not sole practitioners. Also, it is not common at all among law firms to process personal data other than those necessary for carrying out their functions in society as representing their clients, in court, in negotiations etc. Also, legal services affecting a wide geographic base in Europe are a tiny minority of all the services provided by European lawyers.

Therefore, we are of the view that it would be of considerable assistance to the European profession of lawyers and the European data protection authorities to insert an additional factor on page 9 under Section 5, that would clarify that not only individual lawyers (and healthcare professionals), but also small professional firms acting in their normal course of work would probably be exempt from being considered as processing data on a "large scale", as follows:

"In any event, the WP29 recommends that the following factors, in particular, be considered when determining whether the processing is carried out on a large scale:

- a. the number of data subjects concerned, either as a specific number or as a proportion of the relevant population;
- b. the volume of data and/or the range of different data items being processed;
- c. the duration, or permanence, of the data processing activity;
- d. the geographical extent of the processing activity;
- e. the operation of individual professionals or small firms of professionals in fields comprising their recognised function in society."**

We believe such an addition to the guidelines would serve the interests of many professionals, while at the same time, not deprive data subjects of their rights.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ruthven Gemmell". The signature is written in a cursive, slightly slanted style.

Ruthven Gemmell
CCBE President