

COMP Article 3

14.10.2013

Article 3

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, *whether the processing takes place in the Union or not*.

2. This Regulation applies to the processing of personal data of data subjects *residing* in the Union by a controller *or processor* not established in the Union, where the processing activities are related to:

(a) the offering of goods or services, *irrespective of whether a payment of the data subject is required*, to such data subjects in the Union; or

(b) the monitoring of *such data subjects their behaviour*.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where the national law of a Member State applies by virtue of public international law.

Recitals

(19) Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union or not. Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in this respect.

(20) In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects residing in the Union by a controller not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services, *irrespective of whether connected to a payment or not*, to such data subjects, or to the monitoring *of the behaviour* of such data subjects. *In order to determine whether such a controller is offering goods or services to such data subjects in the Union, it should be ascertained whether it is apparent that the controller is envisaging the offering of services to data subjects residing in one or more Member States in the Union.*

(21) In order to determine whether a processing activity can be considered to ‘monitor’ *the behaviour* of data subjects, it should be ascertained whether individuals are tracked, *regardless of the origins of the data on the internet with or through other means, or if other data about them is collected, including from public registers and announcements in the Union that are accessible from outside of the Union, including with the intention to use, or potential of subsequent use of* data processing techniques which consist of applying a

'profile' ~~to an individual~~, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.