

COMP Article 25
16.10.2013

Article 25

Representatives of controllers not established in the Union

1. In the situation referred to in Article 3(2), the controller shall designate a representative in the Union.

2. This obligation shall not apply to:

(a) a controller established in a third country where the Commission has decided that the third country ensures an adequate level of protection in accordance with Article 41; or

(b) ~~an enterprise employing fewer than 250 persons~~ a controller processing personal data which relates to less than 5000 data subjects during any consecutive 12-month period and not processing special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large-scale filing systems; or

(c) a public authority or body; or

(d) a controller ~~offering~~ only occasionally *offering* goods or services to data subjects *residing* in the Union, *unless the processing of personal data concerns special categories of personal data as referred to in Article 9(1), location data or data on children or employees in large-scale filing systems.*

3. The representative shall be established in one of those Member States where ~~the data subjects whose personal data are processed in relation to~~ the offering of goods or services to *the data subjects them*, or ~~to the monitoring of them~~, *take place reside.*

4. The designation of a representative by the controller shall be without prejudice to legal actions which could be initiated against the controller itself.

Recitals

(63) Where a controller not established in the Union is processing personal data of data subjects *residing* in the Union ~~whose processing activities are related to the offering of goods or services to such data subjects, or to the monitoring of their behaviour~~, the controller should designate a representative, unless the controller is established in a third country ensuring an adequate level of protection, or the ~~controller processing relates to fewer than 5000 data subjects during any consecutive 12-month period and is not carried out on special categories of personal data~~, or is a public authority or body or where the controller is only occasionally offering goods or services to such data subjects.

The representative should act on behalf of the controller and may be addressed by any supervisory authority.

(64) In order to determine whether a controller is only occasionally offering goods and services to data subjects *residing* in the Union, it should be ascertained whether it is apparent from the controller's overall activities that the offering of goods and services to such data subjects is ancillary to those main activities.