EDPS-ENISA CONFERENCE ON PERSONAL DATA BREACHES

Panel Discussion III
Supporting data controllers on assessing the risk of a personal data breach
1. Immediate actions

- Quick scan: malicious or not?
- Manage communications (instruct employees)
- Contain the risk as much possible and mitigate
- Strategic decision: restore v not contaminating
2. Fact finding - forensics

- Collect relevant information about the context of the data breach and impact
- Assistance from external forensic experts/auditors with effective tools (DPA)
- Document steps undertaken (log)
- Territorial aspects of the attack: where did the breach occur?
2. Fact finding - forensics

- Nature of the data breach: human error, technology failure, malicious intent …
- Data involved: which databases, which types, sensitive, volumes, etc.
- Categories/number of data subjects affected: suppliers, customers, employees, website visitors, etc.
- Time of the data breach
2. Fact finding - forensics

• Likely consequences
• Name and contact details (DPO, legal, risk, CISO?)
• Measures taken or proposed to address the breach, including to mitigate adverse effects
• Attach the form to be submitted to the DPA
3. Notification obligations

- **Notification of the DPO/data protection team**
- **Notifying data protection authority (article 33 GDPR)**
  - “likely to result in a risk to the rights and freedoms of data subjects” (low threshold)
  - “Without undue delay and where feasible within 72 hours after becoming aware of the breach” (be pragmatic, but notify even when only partial information)
  - It is recommended to only provide the information that is required
  - Which authority? Principle of “leading supervisory authority” for all cross-border processing of personal data: the authority of the place where the data controller has its main establishment
  - Who is data controller? (can be tricky – file on behalf of all entities involved)
3. Notification obligations

- **Notifying data subjects (article 34 GDPR)**
  - “Without undue delay”, but no strict time limit
  - “breach is likely to result in a high risk to the rights and freedoms of natural persons”
  - Can be cross-checked with DPA

- **Notification of CERT**

- **Notifying customers, suppliers and other stakeholders**
  - Under specific contractual obligations (to check) but also general contract law

- **Notification of sector specific regulators (Financial, Telco, Aviation, ...)**
4. Filing a criminal complaint (if malicious)

- Public prosecutor (IT forgery, IT fraud, hacking and IT sabotage are criminally sanctioned)
- Safeguard your interests vàv other stakeholders (shareholders, business partners,…)
- Ideally in the jurisdiction of the place where it is easiest to collect the required evidence
- Can be in multiple jurisdictions
- No strict time limit for such complaints, best once a first level of analyses has
Thank you!

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Thank you