



The list of names of the key stakeholders to whom the letter has been sent:

European Commission:

Bruno Gencarelli, Head of Unit C.3 (Data protection): bruno.gencarelli@ec.europa.eu

Kevin O'Connell, Adviser in Jourova's Cabinet (Data protection): kevin.oconnell@ec.europa.eu

European Parliament:

Jan Philipp ALBRECHT, Rapporteur on the proposal for the Regulation: jan.albrecht@europarl.europa.eu

Shadow rapporteurs:

Axel VOSS: axel.voss@europarl.europa.eu

Marju LAURISTIN: marju.lauristin@europarl.europa.eu

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European Council:

Luxembourg Permanent Representative

Laure Wagener, Counsellor (Data protection): Laure.Wagener@mae.etat.lu

Kraainem, 7th of December 2015

Ref: EUF/ES/15-014

Re: EU Data Protection Reform - Draft General Data Protection Regulation

Dear Madam or Sir,

Even though the trilogue negotiations regarding the EU General Data Protection Regulation are to be finished within the next few weeks, the EUF wishes to draw your attention to certain aspects where the interplay of data protection rules and the legitimate interests of particularly SMEs regarding their refinancing needs to be enhanced and clarified.

Who is the EU Federation for Factoring & Commercial Finance (EUF)?

The EUF is the industry body and voice for the European factoring industry. The EUF's members consist of 14 national factoring and commercial finance associations (representing 15 EU-member states, namely [in alphabetic order] Austria, Belgium, the Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, Spain, Sweden and the UK) and two international factoring associations, who in turn represent over 400 factoring and commercial finance companies. The EUF is a European wide association of associations, acting as one voice for the Receivables Finance and Factoring Industry in the

EU Federation for the Factoring and Commercial Finance Industry

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EU. In 2014, the Receivables Finance Industry in the EU provided over €185 billion of working capital financing to over 160,000 businesses, mostly SMEs. This amount of working capital has to be seen in relation to the total factoring turnover in the EU, which in 2014 exceeded € 1.3 trillion. If you consider that the total EU GDP was approximately € 13 Trillion that same year, businesses supported by these types of finance accounted for approximately 10% of GDP, a figure representing the “real economy” in the EU.

The EUF represents an industry that is one of the leading drivers of financing for SMEs in the EU. Factoring companies in particular have been one of the leading drivers of growth for SMEs, as they provide a means to provide working capital through a highly effective operating platform that reduces the risk of default and supports the flow of finance downstream, supporting supply chains in the real economy. Traditionally, a factoring company provides liquidity to an SME based on the eligible receivables assigned to it. The factoring company may provide a form of credit protection against the default risk of the client’s customers as well, providing additional capital to their end buyers, many of whom are SMEs themselves, ultimately offering liquidity in the supply chain that normally would be challenged otherwise. Hence, you can say that factoring is a unique blend of services designed to ease the traditional problems of selling on open account terms, mainly aimed towards SMEs.

Forms of factoring

The original and traditional form of factoring consist of an agreement between a business (Assignor) and a financial entity (Factor) in which the Assignor assigns/sells its receivables to the Factor and the Factor provides the Assignor with a combination of one or more of the following services with regard to the receivables assigned: Advance of a percentage of the amount of receivables assigned, receivables management, collection and credit protection. Usually, the Factor administers the Assignor’s sales ledger and collects the receivables in its own name. There are different forms and variations of this original form of factoring, depending on e.g. the applicable national legal framework and on the service aspect of factoring which prevails for the Assignor.

The assignment can be disclosed to the debtor of the assigned receivable, but in several European jurisdictions (e.g. in Germany, Austria and Poland), this is not a requirement for the assignment to be valid. Therefore, invoice discounting and non-notification factoring are forms of factoring which are offered and used in those EU member states.

Moreover, factoring is mostly used in B2B-relationships, i.e. both the Assignor and the debtor of the assigned receivable are businesses and hence legal entities, not natural persons. There is however also B2C-factoring, where the debtor of the assigned receivable is a natural person. In such cases, where special categories of personal data (such as medical data) are concerned,

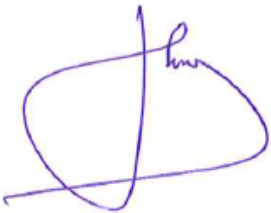
current legislation already requires the explicit consent of the debtor to the collection, processing and forwarding of personal data.

Need for clarification regarding data protection

As valid assignments which comply with the applicable (civil/contractual) laws change neither the nature of the receivable nor the rights of the debtor, it should be taken into consideration that the involvement of a third party such as a Factor due to an assignment does not alter the original purpose(s) for which data were collected and processed. Hence, the forwarding of data to the Factor as well the processing of data by the Factor should remain lawful under art. 6 of the General Data Protection Regulation. Moreover, it should generally also be sufficient that the Assignor complies with any information and transparency rules vis à vis the data subject, as the Factor could only reiterate this information, an unnecessary bureaucratic burden which may also confuse the data subject more than necessary. The EUF strongly advocates that these viewpoints be integrated into the reformed data protection rules contained in the General Data Protection Regulation as well as into their implementation, not only in the interests of effective (i.e. short and concise) information of data subjects, but also in the interests of particularly SMEs who rely on factoring as an alternative form of financing which has especially helped them through the so-called "credit crunch".

Please do not hesitate to contact us should you require more information about the factoring industry in Europe.

With kind regards,



John Gielen
Chairman - EUF