

Annex 1

Proposals for Amendments regarding Competence & Lead Authority

Background

Already in its opinion WP191 of March 2012 providing input into the discussions on the reform package, the Article 29 Working Party made clear that it is in favour of creating the concept of a lead authority and a clear obligation for DPAs to cooperate and to refer to the consistency mechanism in cases where data subjects in several Member States are likely to be affected by processing operations, as it will lead to a consistent interpretation and application of the EU legal framework, thus creating legal certainty.

The Working Party also welcomes the idea of a one stop-shop for controllers. What should however in any event be clear is that the competence of a lead DPA is non-exclusive, which means that there will be a 'lead authority' acting as a single contact point for a company, taking care of the decision making procedure in which all involved supervisory authorities will take part, with a binding outcome. The competence of the lead DPA is subject to the obligations to cooperate, provide and accept mutual assistance, and make use of the consistency mechanism, as stipulated in Chapter VII on consistency and cooperation, and act in agreement with other involved DPAs.

Following thorough discussions within the Working Party, agreement has been reached on the following five points:

- 1) All supervisory authorities must be competent on the territory of their Member State.
- 2) The 'lead authority' will be the single contact point for a company, taking care of the decision making procedure in which all involved supervisory authorities will take part.
- 3) The outcome of the decision making procedure should be binding on all supervisory authorities.
- 4) The notion of main establishment should be clarified. In cases where nonetheless unclarity remains about which authority will be the 'lead authority', a decision making procedure must be provided, preferably by the European Data Protection Board.
- 5) Individuals must always have the possibility to seek judicial redress in courts in their own Member State.

As also already stated in the opinion adopted in March 2012, the notion of main establishment would benefit from further clarification. And in cases where there is no establishment in the EU, criteria for determining the lead DPA / single contact point could be provided.

Following the above the Working Party has agreed on the proposed amendments below.

Please note that at a later stage, these changes will also need to be reflected in the other relevant recitals and provisions of the Regulation. In the future, the Working Party may of course also further discuss the details of the mutual assistance procedure ex Article 55, including the modalities of the decision making process, and possible amendments to this article and possibly other provisions. This could also involve the role of a lead authority as a coordinator and "single contact point" ex Article 55a.

Competence

<p>1. Each supervisory authority shall exercise, on the territory of its own Member State, the powers conferred on it in accordance with this Regulation.</p>	<p>1. Each supervisory authority shall exercise, is competent to supervise all data processing operations on the territory of its own Member State, and where residents of that Member State are affected by other processing operations by a data controller inside or outside the EU, within the scope of this Regulation. In doing so, the supervisory authority shall exercise on the territory of its own Member State the powers conferred on it in accordance with by this Regulation.</p>
<p>2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.</p>	<p>2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.</p>
<p>3. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity.</p>	<p>2. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity.</p>

	<p>1. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall act as a single contact point for the controller or processor and ensure coordination with other supervisory authorities involved.</p>
	<p>2. Where it is unclear from the facts of the case or where the competent authorities do not agree on which supervisory authority shall act as single contact point, the European Data Protection Board shall on request of a competent authority designate the single contact point.</p>
	<p>3. Where the controller is not established in the Union, but residents of different Member States are affected by processing operations within the scope of this Regulation, the European Data Protection Board may designate a supervisory authority which shall act as a single contact point for the controller and ensure coordination with other supervisory authorities involved.</p>
	<p>4. Where necessary, the supervisory authority referred to in paragraphs 1, 2 and 3 shall decide in accordance with the consistency mechanism set out in Article 58. Its decision shall be considered as jointly approved by all competent supervisory authorities.</p>