

Statement of the WP29 on current discussions in the Council regarding the EU General Data Protection Regulation

Main points for a one-stop-shop and consistency mechanism for businesses and individuals

The aim of this statement is to support a compromise between the current positions in the Council Dapix Working Group on the one-stop-shop and the consistency mechanism.

In doing so, the Working Party takes into account the vote of the European Parliament in its first reading of the draft Regulation of 12 March 2014. It also takes into account the outcome of the JHA Council of October 2013 and the various positions expressed within the Council on the one-stop-shop mechanism.

The Working Party recalls its two opinions providing input into the legislative process (WP191 and WP199). It also recalls its additional statement on the reform package of 27.02.2013, Annex 1 Competence and Lead Authority, where it stated that:

- All supervisory authorities must be competent on the territory of their Member State.
- 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.
- The outcome of the decision making procedure should be binding on all supervisory authorities.
- 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
- Individuals must always have the possibility to seek judicial redress in courts in their own Member State.

As regards the current state of negotiations in the European Parliament and in the Council of the EU, the Working Party takes the following position on the one-stop-shop and the consistency mechanism:

1. The Working Party underlines that all supervisory authorities shall remain competent for monitoring the application of the Regulation and for exercising the powers conferred on them in accordance with the Regulation on the territory of their Member States, including where individuals on their territory are affected by data processing by controllers and processors established within or outside the EU.

2. The Working Party supports the idea of a one-stop-shop mechanism in cases where a processing of personal data takes place in the context of activities of establishments of a controller or a processor located in different Member States of the EU or where individuals in several Member States are affected by a processing operation. In this case, the supervisory authority in the Member State of the main establishment should be the lead supervisory authority with an obligation to closely cooperate in an endeavour to reach consensus with

those supervisory authorities where the controller or the processor also is established. The same principle should apply, where a controller or processor has one or more establishments within the EU, but individuals are affected by the data processing also in Member States where there is no establishment. In addition, attention should be paid to ensure consistency in cases where there is no establishment in the EU at all. Cases of minor cross-border or even pure national relevance should be left to be decided by the national supervisory authorities. The EDPB European Data Protection Board (EDPB) should provide guidance on such minor cases to ensure EU-wide consistency.

3. The lead supervisory authority and the concerned national supervisory authorities need to closely cooperate. If the lead supervisory authority and the national supervisory authorities reach consensus on a case, the lead supervisory authority shall take all relevant measures, including authorizations and corrective powers, vis-à-vis the main establishment of the controller or the processor. Exceptionally, if they do not reach consensus, the matter shall be dealt with by the EDPB. The controller and the processor shall have a clear responsibility to fulfil and implement the measures of the lead supervisory authority or the EDPB in all of its EU establishments.

4. A measure or decision by a supervisory authority regarding an individual whose complaint has been rejected should be challengeable before the courts of the Member State of the supervisory authority where the complaint has been lodged.

5. Like the European Parliament, the Working Party is of the opinion, that the position of the EDPB should be strengthened in order to issue binding guidelines or other measures, when concerned supervisory authorities in cross-border cases do not reach a consensus within the one-stop-shop mechanism. In addition to its role under paragraph 3, it should be ensured that the EDPB generally should deal with cases of general relevance for EU data protection or issues of novelty.

6. The Working Party supports the elements of the proposed Regulation which shall strengthen the responsibilities of companies to comply with data protection law. This includes the EU-wide establishment of internal data protection officers, data protection impact assessments, the principles of privacy by design and privacy by default, certification mechanisms, BCR, privacy seals and codes of conduct. Questions on legal compliance may be solved within the framework of prior consultation with the supervisory authorities. Besides these instruments, in the view of the Working Party, there is no need for introducing formal and time-limited procedures for EU-wide compliance approvals. In particular, the clarification of compliance issues must not lead to an inappropriate shift of responsibilities to the supervisory authorities with possible serious consequences for their workload. It must also not lead to a suspension or other restriction of measures of supervision in the case of data breaches or individual complaints.

7. The Working Party stresses that to be effective, the operation of the one-stop-shop has to be capable of being readily understood and easily used by individuals, data controllers and supervisory authorities alike. It is therefore essential that the system is as straightforward as possible and that the relevant provisions of the regulation are both clear and accessible.