



Council of the
European Union

Brussels, 16 December 2014
(OR. en)

16974/14

**Interinstitutional File:
2012/0011 (COD)**

LIMITE

**DATAPROTECT 187
JAI 1020
MI 1009
DRS 173
DAPIX 188
FREMP 229
COMIX 677
CODEC 2526**

NOTE

From: Presidency
To: Friends of Presidency (DAPIX)
Subject: General Data Protection Regulation
- The one-stop-shop mechanism

In view of the meeting of the Friends of Presidency of 17 December 2014 delegations find attached a revised text of the one-stop-shop mechanism as regards Articles 4, 51, 54a to 54c.

The revised text builds on the outcome of the December 2014 JHA Council debate on the Presidency proposal for the constituent elements of the overall architecture of the ‘one-stop-shop’ mechanism. On this occasion, a majority of ministers endorsed the general architecture of the proposal and the Presidency concluded that further technical work will need to be done in the coming months.

Against this background, the Presidency has further streamlined the system and addressed concerns expressed by some delegations as regards:

- a clearer delineation between "one-stop-shop situations " and local cases;
- the likely administrative burden of a register for "main establishment";
- a further clarification of the elements forming the "co-decision"-making process;
- a better framing of the number and type of cases that may go to the European Data Protection Board for a binding decision (inclusion of filters).

The issue of judicial review of a binding decision by the European Data Protection Board together with the provisions linked to the European Data Protection Board itself are not the object of this revised text.

Article 4: definitions

(13) ‘main establishment’ means¹

- as regards a controller with establishments in more than one Member State, the establishment of the controller in the Union which determines the purposes and means of the processing of personal data. If no decisions as to the purposes (...) and means of the processing of personal data are taken in the Union, (...) the establishment of the controller in the Union where the main processing activities (...) take place;
- as regards a processor with establishments in more than one Member State, the place of its central administration in the Union and, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place;
- Where the controller exercises also activities as a processor, (...) the main establishment of the controller shall be considered as the main establishment for the supervision of processing activities;
- Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking shall be considered as the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking;

¹ DE, supported by AT, remarked that, in view technological developments, it was very difficult to pinpoint the place of processing and that it was very tricky to establish a main establishment with far-reaching legal consequences. EE also thought more clarity was required. DE, CZ, SI and PL expressed a preference for a formal criterion, which referred to the incorporation of the controller.

(19a) ‘supervisory authority concerned’ means a supervisory authority which is concerned by the processing, because the controller or processor is established on the territory of the Member State of that supervisory authority or because data subjects residing in this Member State are **or are likely to be** substantially affected by the processing.

(19b) **“transnational processing of personal data” means:**

- **a processing which takes place in the context of the activities of an establishment of a controller or processor in the Union which is established in more than one Member State, or**
- **a processing which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to affect substantially data subjects in more than one Member State**

SECTION 2 COMPETENCE, TASKS AND POWERS

Article 51

General competence

1. Each supervisory authority shall (...) perform the tasks and (...) exercise the powers conferred on it in accordance with this Regulation (...) on the territory of its own Member State, without prejudice to Article 54a.

3. Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity. (...).

Recital 95a

Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the tasks conferred on it in accordance with this Regulation. This should cover in particular the processing in the context of the activities of an establishment of the controller or processor on the territory of its own Member State, processing of personal data concerning data subjects on its territory or processing carried out by a controller not established in the European Union when targeting data subjects residing in its territory. This should cover a possible infringement of this Regulation detected by or otherwise brought to its attention, complaints lodged by a data subject, conducting investigations on the application of the Regulation, promoting public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data.

CHAPTER VII

CO-OPERATION AND CONSISTENCY

SECTION 1

CO-OPERATION IN THE ONE STOP SHOP MECHANISM

Article 54a²

Lead supervisory authority

Option 1

1. The supervisory authority of the main establishment or of the single establishment of the controller or the processor shall act as lead supervisory authority in the following situations:
 - a) where the processing of personal data takes place in the context of the activities of a controller or processor in the Union and the controller or processor is established in more than one Member State; or
 - b) where the processing of personal data takes place in the context of the activities of a single establishment of a controller or processor in the Union and the processing substantially affects or is likely to affect substantially data subjects in more than one Member State. In particular, processing is deemed to substantially affect data subjects in more than one Member State where the controller or processor is offering, as its core activity and on a regular basis, goods and services to, or is monitoring the behaviour of data subjects, in more than one Member State.
2. In the situations referred to in paragraph 1, the lead supervisory authority shall be the sole interlocutor of the controller or processor.
4. This article shall not apply where the processing is carried out by public authorities and bodies of a Member State.

² Moved from Article 51a.

Option 2

1. The supervisory authority of the main establishment or of the single establishment of the controller or the processor shall act as lead supervisory authority for the transnational processing of this controller or processor in accordance with the procedure in Article 54a.
2. By derogation from paragraph 1, each supervisory authority shall be competent as regards a transnational processing for which it is not the lead authority, to deal with a complaint lodged or to deal with a possible infringement of this Regulation detected or otherwise brought to its attention, including for seeking an amicable settlement of the complaint or infringement case, if the subject matter of the case concerns processing activities only in its Member State or substantially affects or is likely to substantially affect data subjects only in this Member State in accordance with the procedure foreseen in Article 54b.
3. The lead supervisory authority shall be the sole interlocutor of the controller or processor for its transnational processing.
4. This article shall not apply where the processing is carried out by public authorities and bodies of a Member State.

Article 54aa

Co-operation and co-decision between lead supervisory authority and concerned supervisory authority

- 1a. ***Option 1:*** (...) The lead supervisory authority (...) shall cooperate in an endeavour to reach agreement with any supervisory authority which is concerned by the processing referred to in Article 54a either because the controller or processor is established on the territory of the Member State of that supervisory authority, or because data subjects residing in this Member State are or are likely to be substantially affected by the processing ('concerned supervisory authority'). (...) .

Option 2: (...) The lead supervisory authority (...) shall cooperate with the supervisory authority concerned in accordance with this article (...) in an endeavour to reach agreement. (...). (...).

- 2a. The lead supervisory authority may request at any time any concerned supervisory authority to provide mutual assistance pursuant to Article 55 and may conduct joint operations pursuant to Article 56, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.
- 2b. Following the cooperation referred to in paragraph 1a and, as the case may be, the mutual assistance referred to in paragraph 2a, the lead supervisory authority shall (...) submit a draft decision as regards the processing referred to in Article 54a (...) to the concerned supervisory authorities for their agreement. The draft decision shall include an assessment on whether or not there is an infringement of this Regulation by the controller or processor, and on the envisaged exercise of the powers referred to in paragraphs 1, 1b and 1c of Article 53.
 - a) (...)
 - b) (...)
 - c) (...)
3. The concerned supervisory authorities have a period of [four weeks] to agree to the draft decision. Where a concerned supervisory authority does not react within this period, it shall be deemed to be in agreement with the draft decision.
- 4a. **Option 1:** Unless at least a third of the concerned supervisory authorities raises a serious objection in the meaning of paragraph 2 of Article 54c, the lead supervisory authority shall adopt the decision.

Option 2: Unless any of the concerned supervisory authorities raises a serious objection in the meaning of paragraph 2 of Article 54c, the lead supervisory authority shall adopt the decision.

- 4aa. The lead supervisory authority shall notify the decision to the main establishment or single establishment of the controller or processor on the territory of its Member State. The lead supervisory authority shall inform the European Data Protection Board of the decision in question and include a summary of the relevant facts and grounds.
- 4b. By derogation from paragraphs 4a and 4aa, where the decision concerns a complaint and as far as it adversely affects the complainant, notably where the complaint is dismissed or rejected, (...) the supervisory authority of the complainant shall adopt the decision and notify it to the complainant.
- 4bb. Where the decision partly dismisses or rejects a complaint, the lead supervisory shall adopt the decision for the part concerning actions in relation to the controller or processor and notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State, while the supervisory authority of the complainant shall adopt the decision for the part concerning dismissal or rejection of the complaint and notify it on the complainant.
- 4c. After being notified of the decision of the lead supervisory authority pursuant to paragraphs 4a and 4bb, the controller or processor shall take the necessary measures to ensure compliance with the decision as regards the processing activities in the context of all its establishments in the Union. The controller or processor shall notify the measures taken for complying with the decision to the lead supervisory authority, which shall then inform all the supervisory authorities concerned. The supervisory authorities concerned shall be bound by the decision.
- 4d. Where, in exceptional circumstances, a supervisory authority concerned has reasons to consider that there is an urgent need to act in order to protect the interests of data subjects, the urgency procedure referred to in Article 61 shall apply.

5. The lead supervisory authority and the concerned supervisory authorities shall supply the information required under this Article (...) to each other by electronic means, using a standardised format.

Article 54b

Cooperation between the lead supervisory authority and the other supervisory authority concerned in (...) local cases concerning transnational processing (...)

Option 1: no such provision

Option 2:

1. In the cases referred to in Article 51a, paragraph 2, **the supervisory authority in charge of the case shall:**
 - a) **inform the lead supervisory authority of all the actions undertaken;**
 - b) **send it its requests for mutual assistance pursuant to Article 55 and its requests to conduct joint operations pursuant to Article 56;**
 - c) **submit a draft decision to the lead authority.**
2. **The lead supervisory authority may decide at any stage/step of the procedure that the case must be dealt in accordance with the procedure** foreseen in Article 54a.
3. Where the lead supervisory authority has not objected within a period of [3 weeks] to the draft decision, it is deemed to be in agreement with the draft decision.
4. Where the lead supervisory authority expresses a reasoned **and serious** objection within a period of [3 weeks], the supervisory authority shall, if it does not follow the objection, submit the matter to the (...) European Data Protection Board, which shall settle the dispute by issuing a binding decision for all the supervisory authorities concerned pursuant to Article 58a.

5. For the adoption of the final decision, the procedure of Article 54a, paragraphs 4a or 4b as the case may be shall apply.

Article 54c

*Disputes between the lead supervisory authority and
concerned supervisory authorities*

1. In case of a serious objection referred to in paragraph 4a of Article 54aa, the European Data Protection Board shall settle a dispute between supervisory authorities in accordance with the procedure referred to in Article 58a.
2. A serious objection within the meaning of paragraph 4a of Article 54aa shall be an objection on grounds relating to whether there is an infringement of this Regulation or not, or, as the case may be, on the envisaged action in relation to the controller or processor. The objection shall be accompanied by an analysis of the significance of the risks posed by the draft decision as regards the free flow of personal data or the fundamental rights and freedoms of data subjects.
