



Brussels, 23 January 2015
(OR. en)

5572/15

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

LIMITE

**DATAPROTECT 11
JAI 46
MI 34
DRS 11
DAPIX 16
FREMP 12
COMIX 42
CODEC 90**

NOTE

From: British delegation

To: Working Group on Information Exchange and Data Protection (DAPIX)

No. prev. doc.: 5315/15 DATAPROTECT 4 JAI 23 MI 22 DRS 5 DAPIX 9 FREMP 4
COMIX 25 CODEC 51

Subject: Proposal for a Regulation of the European Parliament and of the Council
on the protection of individuals with regard to the processing of personal
data and on the free movement of such data (General Data Protection
Regulation)

- The one-stop-shop mechanism

1. The UK supported the Commission's original proposals for an effective One-Stop-Shop mechanism. We accept that this might encompass co-operation between a 'lead' DPA and concerned, 'local' DPAs in important cross-border cases. This model provides proximity, guarantees legal certainty and encourages constructive co-operation between DPAs across the Union, creating a pure One-Stop-Shop that acts efficiently and effectively.
2. We thank Ireland, the French and German delegations and the Presidency for the papers they have submitted. We have studied these and appreciate their constructiveness, outlining possible qualitative and quantitative filters that seek to prevent an EDPB being overloaded by cases.

3. We do, however, wish to set out a separate proposal, taking into account Member States' concerns regarding the necessity of 'thresholds' for referring cases to the EDPB whilst simultaneously addressing the original requirements for legal certainty and simplicity that makes the model easy to navigate for citizens, business and regulators alike.
4. Firstly, we agree with the Irish proposal that the EDPB should be confined to determining whether the facts of the case amount to an infringement or breach of relevant data protection rules, including this Regulation. The EDPB should not have a role to play in resolving disputes between DPAs on corrective action which should be decided upon by the lead DPA, with the local DPA following its lead. This would not only guarantee better legal certainty, but would also preserve proximity for data subjects.
5. Secondly, our model seeks to encourage a more collaborative way of working that sits easily alongside existing practice. Local DPAs currently collaborate in important cross-border cases under the 1995 Data Protection Directive, coming to collective decisions with rare cases of disputes between them. The General Data Protection Regulation strengthens and further streamlines the current Data Protection Directive 1995, and we therefore envisage even fewer cases of disputes arising in the future.
6. We therefore propose a model in which concerned 'local' DPAs and 'lead' DPAs would be encouraged to co-operate on important cross-border cases to come to a collective agreement amongst themselves on whether a breach has occurred. In the small number of cases where an agreement could not be reached by the DPAs involved within a timeframe of six weeks, then they will be entitled to reach a collective decision to refer the case to the EDPB.
7. If a case is referred in this way, the EDPB would then arbitrate on behalf of the DPAs with them having mutually agreed that the EDBP should intervene; the EDPB's decision would then settle the dispute in question. If there was no agreement to refer a case each DPA would be released from the requirement to co-operate and would be entitled to reach their own finding.

8. Knowing that referral to the EDPB is not an easy option would provide a great incentive to ‘lead’ DPAs and ‘local’ DPAs to collaborate and come to a joint agreement themselves. A system under which all DPAs know that a single DPA can undermine their careful negotiations and refer matters to the EDPB with relative ease works against that and is in nobody’s best interests. Our model builds on the work already being done by DPAs throughout the Union, prevents unnecessary bureaucracy and delay and guarantees proximity for data subjects by the majority of decisions being made with real input from local DPAs.
9. France and Germany’s proposal continues to give an individual DPA a disproportionate ability to trigger EDPB involvement. It sees the EDPB making a ruling on whether a case is serious enough to be proposed for settlement at a European level. This will inevitably require a subjective judgment about what is “serious”. What that means will vary from case to case and there will be disputes about whether the EDPB has made the right ruling. A way of challenging rulings will be needed if they are to be legally binding. Whether challenge is through the CJEU or elsewhere, a filter which builds in the potential for this sort of dispute will *increase* complexity, legal uncertainty and delay, rather than reducing it.
10. By contrast, the UK’s proposed model would see the issue of whether a case is sufficiently serious to merit the involvement of the EDPB decided following mature collaboration and the collective agreement of the DPAs themselves. These are currently tasked with making decisions in this area and, under the One-Stop-Shop model, would need to be able to defend these decisions at a local level. If this decision were to be made at a European level, this ability to defend the decision locally would be very difficult.
11. Furthermore, this develops and supports the principle of proximity since it would not be possible for a local DPA to have a decision imposed upon it without its express agreement (either because it made a referral to the EDPB which would mean accepting the EDPB’s ultimate ruling; or because it was able to reach agreement with the lead DPA during the six-week negotiation period).
12. The UK also plans to make an intervention with regards to Article 57.2a, concerning the ability of the EDPB to operate outside of the One-Stop-Shop model.