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NOTE

from: French delegation
to: Working Party on Information Exchange and Data Protection
Subject: General Data Protection Regulation - One-stop-shop mechanism and minor cases

In the perspective of the next DAPIX meeting and in the context of the discussions about the one-stop-shop mechanism, the French delegation would like to present the following elements in order to contribute to the new document which will be discussed.

The French delegation has taken note of the objections raised against its proposal, in particular in the context of “minor cases” brought by a person to his/her local data protection authority.

The French delegation understands these concerns and is willing to address these questions. The French delegation also takes this opportunity to remind the Presidency of the fundamental elements of its alternative proposal which takes into account other concerns expressed by delegations as regards legal certainty or the coherence of the European jurisprudence in the field of data protection.

1. Basic principles of the French proposal

In relation to any cross-border processing, the French delegation still considers that all the authorities concerned should be associated to the supervision at all stages. The French delegation is not willing to involve systematically all the European authorities, but only those that are “concerned” by the processing. By “concerned” we mean the authority of the main establishment of the controller, the authorities corresponding to the other establishments of the controller and the authorities of the Member States where the persons targeted by the processing reside. According to the French delegation, in the case of a transnational processing, a close association of all data protection authorities concerned is necessary.

Although the French delegation strongly supports the participation of the “local data protection authority” which receives a complaint to the adoption of the final decision, it considers that it is not sufficient to involve this authority only at that stage. Common supervision at various stages of the processing is the only way to ensure :

- **legal certainty for the controller** which will benefit from a collective decision of all the data protection authorities when creating the processing, when adopting BCRs or contractual clauses, or when asking for the authorisation to transfer personal data to a third country, and
- **a consistent European approach of the data protection authorities** as regards a transnational processing which may result eventually in a complaint within another Member State than the one of the main establishment (and thus the lead authority).

Only a common supervision from the start can ensure the consistency of the positions of data protection authorities in case a complaint is lodged at a later stage of the processing (because for example the processing may not be in compliance with other national rules such as employment law for instance) and thus avoid legal uncertainty for the controller.

All concerned authorities should be associated in the decision making process. **A system providing for a mere consultation without any binding obligation for the lead authority to take fully into account the opinion of the other concerned authorities would not be acceptable as it would not respect the necessary independence and competence of data protection supervisory authorities.**

The involvement of all concerned authorities in the decision making process also ensures the right for data subjects to seek redress from the court of their Member State. Hence, the decision should not only be enforced by the concerned authorities but endorsed by all.

Further clarifications could be made regarding the complaints related to “minor cases”

Concerning the “minor cases”, the French delegation agrees that there may be room for a distinction between “minor cases” and more important breaches of the data protection rules in the context of the complaints lodged to the data protection authorities. Therefore, the French delegation would like to propose a distinction between two situations and accordingly to provide for a restricted decision-making process for minor cases of complaints:

In all cases, in order to preserve the proximity between the complainant and “its” authority, the local data protection authority to which a complaint has been lodged should always participate to the adoption of the decision with the lead authority of the one-stop-shop. Two cases should be distinguished.

- **Regarding “minor cases”**, it may not be always necessary to involve all the other authorities concerned, for instance in purely individual cases where a person wants to exercise his/her rights as provided for in chapter III of the Regulation and brings a complaint concerning the exercise of his/her rights to his/her local authority. **The French delegation agrees that only the data protection authority of Member State of the person and the lead authority may adopt the decision since the other authorities concerned by the processing have no reason to be associated to the decision.**

- **The situation is different for “important cases”**. When examining the complaint, the local supervisory, or the lead authority as the case may be, may also discover that what seems to be an individual case actually reveals a more important breach of the regulation which necessitates submitting the matter to all the authorities concerned. **The local authority to which a complaint is brought or the lead authority may therefore have the possibility to bring the case to all the authorities concerned in order to adopt the decision collectively.** This possibility should be used essentially for **important cases**, for instance concerning the infringement of its duties and/or obligations by the controller as regards the processing in itself (concerning security measures for instance, or data transfers, etc) or a massive security breach which could concern other persons in different Member States. In this case, the French delegation considers that it is essential to involve all the authorities concerned to guarantee a coherent and unique answer to the breach in all the Member States where the processing is implemented.

The French delegation therefore would like to underline the following points:

- **Since there is an establishment of the controller or since residents are targeted by the processing on its territory, a data protection authority is “concerned” by the decisions concerning this treatment.**
- **Legal certainty and consistency of the European jurisprudence can only be ensured by the participation of all the authorities concerned to the adoption of all the main decisions regarding a specific cross-border processing. The decision making process should be organised in a way to facilitate and speed up decisions. It should be based on the principle of tacit agreement.**
- **When a person brings a complaint to his/her local data protection authority, this authority should always be competent to investigate the case and participate to the adoption of the decision.**
 - **as regards “minor cases”, only the local data protection authority to which the complaint has been lodged and the lead authority of the main establishment shall be competent to jointly adopt a decision.**
 - **as regards “important cases”, if the local data protection authority and/or the lead authority deem it necessary, the matter should be submitted to all the authorities concerned, which should participate to the adoption of the decision, in order to preserve the coherent enforcement of the regulation.**