



Comments and proposals on the Chapter VII of the General Data Protection Regulation

Ahead of the triologue negotiations in October, EDRI, Access, FIPR and Panoptykon would like provide comments on selected key elements of the Chapter VII on Co-operation and consistency.

When amendments are proposed **bold** and ~~strike-through~~ reflect changes from the Commission proposal.

Introduction

In order to have efficient cross-border cooperation, Chapter VII deals with the so-called consistency mechanism. This procedure will defined how different Data Protection Authorities (DPAs) from different member states will deal in cases where a controller is established in more than one Member State. In the current Council text, the DPA of the country where the controller has its main establishment will be competent to deal with all its processing activities across the European Union.

The “one stop shop” mechanism is one of the primary objectives of the Data Protection Regulation. This approach aims at harmonising oversight and implementation of the Regulation, as well as guaranteeing effective remedies for users. At the same time, this mechanism would reduce the administrative burden on companies operating in Europe, providing legal certainty and predictability. The “one stop shop” mechanism would simplify complaints, creating a single point of contact for citizens and business bringing a transnational complaint. It would also ensure consistent application of the Regulation through the European Data Protection Board, eliminating the current common practice of “forum shopping”.

EDRI, Access, FIPR and Panoptykon suggest the following items as the most important for this Chapter:

- The 'lead supervisory authority' should be the single contact point for a controller/processor but relevant cases should be dealt with through cooperation and joint mechanisms and subject to the consistency mechanism.
- The EDPS should be a voting member of the Data Protection Board (latest proposal from the Council is deleting the EDPS in Art.64.2 on the composition of the EDPB).
- Individuals and civil society organisations must always have the possibility to seek judicial redress in courts in their own Member States and also to challenge an interpretation/application of the regulation by the EDPS/DPAs working jointly.
- With regard to export of data, data Protection seals (certifications) and binding corporate rules should all be subject to the one-stop mechanism, at least in transnational cases. Otherwise they will become trojan horses to by-pass the regulation

Chapter VII – Cooperation and Consistency

Section 1 - Cooperation

Article 54a – Lead authority

EDPS

Article 55 – Mutual assistance

EDPS

Article 56 - Joint operations of supervisory authorities

Joint investigation is essential when dealing with EU transnational enforcement or with large-scale cases, i.e. involving big companies or when individual DPAs do not have enough resources to adequately deal with certain cases, due to their size or geographic spread. Joint investigation and strong cooperation would create a positive incentive to deal appropriately with large-scale, complex and/or multi-territorial cases. Such a procedure is also needed to ensure that smaller DPAs are not excessively burdened by cases where large companies fall under their jurisdiction. In addition, it would help to prevent the danger of forum shopping when it comes to the enforcement of the new data protection standards, i.e. choosing the place of establishment for the sake of being under the authority of a DPA that does not have the capacity to undertake large-scale investigations on its own.

EDRi's recommendation for Article 56

1. In order to step up co-operation and mutual assistance, the supervisory authorities shall carry out joint investigative tasks, joint enforcement measures and other joint operations, in which designated members or staff from other Member States' supervisory authorities are involved.
2. In cases where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those Member States shall ~~have the right to~~ participate

in the joint investigative tasks or joint operations, as appropriate. The competent supervisory authority shall invite the supervisory authority of each of those Member States to take part in the respective joint investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay.

3. ~~Each~~ **A** supervisory authority may, as a ~~host supervisory authority~~, in compliance with its own national law, and with the seconding supervisory authority's authorisation, confer executive powers, including investigative ~~tasks~~ **powers** on the seconding supervisory authority's members or staff involved in joint operations or, in so far as the **law of the Member State of the** host supervisory authority's ~~law~~ permits, allow the seconding supervisory authority's members or staff to exercise their executive powers in accordance with the **law of the Member State of the** seconding supervisory authority's ~~law~~. Such executive powers may be exercised only under the guidance and, ~~as a rule~~, in the presence of members or staff ~~from~~ **of** the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the host supervisory authority's national law. The host supervisory authority shall assume responsibility for their actions.

4. **The European Data Protection Board may adopt guidelines, recommendations and best practices regarding the practical aspects of joint operations, in particular with respect to the exercise of investigations under the guidance of another supervisory authority, in accordance with the national law of the Member States.**

5. Where **a joint operation is intended and** a supervisory authority does not comply within one month with the obligation laid down in **the second sentence of** paragraph 2, the other supervisory authorities ~~shall be competent to take~~ **may adopt** a provisional measure on the territory of its Member State in accordance with Article 51(1).

6. The supervisory authority shall specify the period of validity of a provisional measure referred to in paragraph 5 ~~which~~ **which**. ~~This period shall not exceed three months. The supervisory authority shall, without delay, communicate those~~ **such a** measures, ~~together with full its reasons for adopting it,~~ **together** with ~~full its reasons for adopting it,~~ to the European Data Protection Board ~~and to the Commission and shall submit the matter in the~~ **in accordance with the consistency** mechanism referred to in Article 57.

Section 2 - Consistency

The need for a solid, efficient and non-bureaucratic consistency mechanism should be one of the basis of the GDPR. EDRI's suggestions call for an active role of the EDPB proving opinions and decisions within the consistency mechanism, while allowing the European Parliament to be informed regularly, which will add an additional layer of information to the Annual Report proposed by the EDPS in Art. 67.

Article 57 – Consistency mechanism

EDPS

Article 58 - Opinion of the European Data Protection Board

EDPS

Article 58a - Decisions by the European Data Protection Board
EDPS

Article 59 – Opinion by the Commission
Delete as suggested by EP

Article 60 - Suspension of a draft measure
Delete as suggested by EP

Article 60 a - Notification of the European Parliament and the Council
EP

Article 61 – Urgency procedure
Council version

Article 62 – Implementing acts
Commission

Article 63 – Enforcement
EDPS

SECTION 3

EUROPEAN DATA PROTECTION BOARD

The creation of the European Data Protection Board (EDPB) will be a substantial source for harmonisation of rules at the EU level. In order for the EDPB to achieve this, the EDPB needs to have necessary independence, a defined list of tasks and be empowered to implement its duties. Among the suggestions we have included here, most were provided by the European Data Protection Supervisor (EDPS). These cover training, cooperation and the creation of a register of decisions taken by its members and courts on issues dealt with in the consistency mechanism.

Article 64 - European Data Protection Board
EDPS

Article 65 – Independence
EDPS

Article 66 - Tasks of the European Data Protection Board
The European Data Protection Board (EDPB) should be able to monitor the application of the Regulation advising all sorts of European institutions, not only the Commission.

EDRi recommendation for Article 66

EDPS proposal, with the following addition

i) maintain a publicly accessible register of decisions taken by its members and courts on issues dealt with in the consistency mechanism; **and develop an online repository of all laws, regulation, judicial, administrative or other decisions, working paper and opinions on matters related to data protection in the Union, including in particular all those issued by the Board, by the national supervisory authorities, the EDPS, or the Commission.**

Article 67 – Reports

EDRi recommendation for Article 67

1. The European Data Protection Board shall draw up an annual report regarding the outcome of its activities and the protection of personal data in the Union. The report shall be made public and transmitted to the European Parliament, the Council and the Commission.
2. *The annual report shall include a review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1) as well as of the binding decisions referred to in paragraph 3 of Article 57.*

Article 68 – Procedures

EDPS

Article 69 – Chair

EDPS

Article 70 – Tasks of the chair

EDPS recommendation but adding the following:

(aa) to notify decisions adopted by the European Data Protection Board pursuant to Article 58a to the lead supervisory authority and the concerned supervisory

Article 71 – Secretariat

EDPS

Article 72 – Confidentiality

European Parliament text