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From: Presidency

To: Permanent Representatives Committee

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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

Background

1. The one-stop-shop mechanism was discussed at the DAPIX meetings on 26-27 January and of 5-6 February 2014, as well as at the JHA Counsellor meeting of 16 February 2015. Following these discussions, the Presidency has revised the text of Chapters VI and VII. The latest changes are marked in **bold underlining**. The Presidency has endeavoured to take into account delegations' point of view. Regarding the procedure for dealing with transnational cases with a local impact only, the Presidency has modified Article 51a so as to ensure that it will be the lead supervisory which eventually adopts the decision. This is done in order to ensure that the lead can ensure the enforcement of the decision on the main establishment of the controller or processor. The fact that the local authority will be the one preparing the draft decision strikes the right balance between the concerns for proximity and for effectiveness.
2. Annex I sets out the revised text of Chapters VI and VII. Annex II sets out additional text for Options 1 and 2 for the question on judicial review of legally binding EDPB decisions. COREPER is invited to discuss the questions et out hereafter.

Question I: Quantitative threshold for submitting cases to the EDPB (Article 54a (3))

3. With a view to limiting the caseload of the future European Data Protection Board (EDPB), delegations have discussed the question of inserting a quantitative threshold, by requiring a minimum relative number of supervisory authorities to object to the draft decision of the lead authority (by formulating a relevant and reasoned objection).
4. Some Member States were arguing for a high threshold (by requiring half of the concerned supervisory authorities to object) whereas others were opposed to any quantitative threshold. The Presidency had therefore suggested low quantitative threshold of 1/3 of the concerned supervisory authorities, as soon as there is more than one concerned supervisory authority other than the lead authority. So far this proposal did not muster the support of a majority of the Member States, but in view of the fact that it was supported by a sizeable minority, the Presidency has, for now, kept the proposal in square brackets as an alternative in Article 54a (3).

5. *Delegations are invited to indicate whether they prefer:*

- *a quantitative threshold of 1/3 of the concerned supervisory authorities; or*
- *a system in which the relevant and reasoned objection of a single concerned supervisory authority can always trigger the matter to be dealt with by the EDPB in the consistency mechanism.*

Question II: Review of legally binding EDPB decisions

6. The discussions among Member States have clearly demonstrated Member States' wishes to have an effective system of judicial review of the legally binding decisions of the Board, the importance which was also emphasised at Ministerial level. Article 263 TFEU provides for jurisdiction of the Court of Justice of the European Union ("CJEU") to review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects *vis-à-vis* third parties ("action for annulment"). This will clearly also allow for the review of legally binding EDPB decisions and such review proceedings may be instituted directly before the CJEU by the addressee(s) of the EDPB decisions or by other persons which are directly and individually concerned by them (fourth paragraph of Article 263 TFEU). In addition, Article 267 TFEU provides for jurisdiction of the CJEU to give preliminary rulings concerning *inter alia* the validity and interpretation of the legally binding EDPB decisions as well as the interpretation of the Regulation, where such questions are raised before national courts.

7. The architecture of the one-stop-shop system currently includes that the EDPB decisions, even though legally binding, will have to be implemented by the national supervisory authority (in case a violation is found, the lead authority; in case a complaint is rejected, the 'local' authority at which the complaint was lodged). In reality, the data subject will thus only get to know the 'full picture' of the reaction that is given to his complaint following the decision by the national supervisory authority. It is therefore likely that in many cases the data subject will await the outcome of the procedure at national level before evaluating or at least deciding whether to request a judicial review of the EDPB decision which is implemented by the decision of the national authority.

8. However, the sixth paragraph of Article 263 TFEU provides that the action for annulment before the CJEU must be instituted 'within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be'. Therefore the data subject or the controller who had been informed of the EDPB decision when it was adopted and has awaited the subsequent notification of the decision of the national supervisory authority may be time barred if he wants to bring an action for annulment before the CJEU against the EDPB decision that gave rise to the national decision. Obviously the data subject (and/or controller) may still seek judicial review by the competent Member State court of the national decision based on the EDPB decision, but that national court will also be bound by the legally binding EDPB decision and will not be able to request a preliminary ruling to the CJEU on the validity of the EDPB decision if the data subject or the controller who is directly and individually concerned by it has not challenged it before the CJEU within the two months' period.

9. The discussions so far have shown that there are two possible avenues to address this issue, whilst fully respecting the Council's orientation to provide the Board with effective powers to adopt legally binding decisions. Both options allow data subjects (and controllers) still to successfully challenge the validity of an EDPB decision at the moment they are notified of the national DPA decision implementing the EDPB decision.

10. A *first option*, which is based on the fifth paragraph of Article 263 TFEU, is to provide in the General Data Protection Regulation that the expiration of the two-months period would not prevent a data subject or a controller from challenging the validity of an EDPB decision in the context of the national judicial review of the DPA decision implementing the EDPB decision. This solution is provided for by draft paragraph 2 of Article 76b, as set out in annex II (*Option 1*). This solution would guarantee effective judicial review proceedings at Union and national level. However, the fifth paragraph of Article 263 TFEU is a new Treaty provision the scope of which has not yet been interpreted by the CJEU.

11. A *second*, alternative *option* is to provide in the General Data Protection Regulation that the EDPB decision must be published. In this case, the two-months period for launching an action for annulment of the EDPB decision by the complainant or the controller if they are directly and individually concerned, would start running only at the moment of the publication of the EDPB decision (*Option 2*). The EDPB decision would thus be published on the website of the EDPB and, where required, in a de-personalised way (i.e. by deleting the names of the parties). The Regulation would also have to provide for a mechanism by which the EDPB would delay the publication of its decision after the adoption by the national supervisory authority of its decision, so that the two-months period for bringing an action for annulment before the CJEU would start to run only on the day of publication. At the same time the Regulation would also have to provide that the national supervisory authority would be obliged to notify its decision without delay after its adoption and in this notification, would be obliged to inform the data subject (and the controller) of the fact that the EDPB decision relating to him will be published.

12. *Delegations are invited to indicate which option they prefer in order to allow the data subject/controller to successfully challenge an EDPB decision at the moment he is notified of the national DPA decision implementing the EDPB decision.*

Question III: Ensuring the secretariat of the EDPB (Article 71)

13. The European Data Protection Board shall be composed of the head of one supervisory authority per Member State. Article 71 of the Commission proposal provides that the European Data Protection Supervisor¹ shall provide the secretariat of the EDPB. A large group of Member States has voiced misgivings about this, citing in particular the risk of conflicts of interest of EDPS staff. So far no alternative proposal has been made. The idea of continuing the Commission acting as secretariat, as it is currently doing for the so-called Article 29 Working Party (i.e. the working Party where the supervisory authorities of all 28 Member States meet²) clearly enjoys no support.

¹ The EDPS was established by Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

² Working Party on the Protection of Individuals with regard to the Processing of Personal Data; set up pursuant to Article 29 of Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

14. A potentially far-reaching alternative is to establish the EDPB as an agency of the European Union with its own staff and budget, not connected to any other EU body or agency. The amended draft already provides that the EDPB shall be established as body of the Union and shall have legal personality. To provide that the EDPB would be a Union agency would, however, require that the draft Regulation be supplemented with detailed rules on staff and budget. The Commission would also need to be invited to provide a revised financial statement to that effect. It would also require a decision on the agency's seat. The setting up of an agency with its own staff would not exclude that it could use the facilities of and/or rely upon the logistical support of the EDPS. Such solution has been proposed by the Commission in the context of the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office³.

15. It is doubtful whether the establishment of the EDPB as a Union agency would be in line with the Common Approach of the European Parliament, the Council of the European Union and the Commission on decentralised agencies. This common approach states that "merging agencies should be considered in cases where their respective tasks are overlapping, where synergies can be contemplated or when agencies would be more efficient if inserted in a bigger structure". It is moreover clear that, should Member States prefer this option, the legislative work on this Regulation will be further delayed.

16. In reality the scope for conflicts of interest between EDPS staff working for the EDPS itself and those working for the EDPB may be rather limited. At any rate, the draft decisions that will be submitted to the Board will have been drafted at first instance by the lead supervisory authority, as will be the case for the relevant and reasoned objection(s) by the concerned supervisory authorities that are in disagreement with the draft decision. The question therefore arises whether Member States' concerns regarding the autonomy of EDPS staff working for the EDPB cannot be allayed by inserting in the draft Regulation a number of rules aimed at preventing such conflicts of interests.

³ See in particular Article 57(6) of that proposal: 12558/13 EPPO 3 EUROJUST 58 CATS 35 FIN 467 COPEN 108.

17. Article 43 of Regulation (EC) No 45/2001 of 18 December 2000 provides that the officials and the other staff members of the shall be subject exclusively to the direction of the European Data Protection Supervisor. It could be envisaged that the General Data Protection Regulation would provide that the officials and other staff members of the EDPS secretariat who work for the European Data Protection Board, as far as the execution of their tasks for the EDPB is concerned, would not be subject to the direction of the EDPS, but exclusively to the direction of the Board (Chair). The officials working for the EDPB would thus be appointed by the EDPS but would not receive any instruction from the EDPS as far as the execution of their tasks is concerned. At the same time it could be envisaged that the EDPS and/or EDPB would be tasked with establishing and maintaining effective arrangements, systems and procedures aimed at preventing that information handled by the EDPS staff working for the EDPB would be accessible to other EDPS staff.

18. *In the light of the above, delegations are invited to indicate whether they prefer*

- *to entrust the secretariat of the EDPB to the EDPS;*
- *to entrust the secretariat of the EDPB to the EDPS on the condition that appropriate safeguards are laid down in the Regulation to ensure the autonomy of EDPS staff working for the EDPB; or*
- *setting up the EDPB as an agency with its own staff and budget (possibly combined with a possibility to rely on EDPS facilities).*

16a) While this Regulation applies also to the activities of courts and other judicial authorities, Union or Member State law could specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of its judicial tasks, including its decision-making. Supervision of such data processing operations may be entrusted to specific bodies within the judicial system of the Member State, which should in particular control compliance with the rules of this Regulation, promote the awareness of the judiciary of their obligations under this Regulation and deal with complaints in relation to such processing.

.....

27) The main establishment of a controller in the Union should be the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union. In this case the latter should be considered as the main establishment. The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes (...) and means of processing through stable arrangements. This criterion should not depend on whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore not determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union and, if it has no central administration in the Union, the place where the main processing activities take place in the Union. **In cases involving both the controller and the processor, the competent lead supervisory should remain the supervisory authority of the Member State where the controller has its main establishment but the supervisory authority of the processor should be considered as a concerned supervisory authority and participate to the cooperation procedure provided for by this Regulation. In any case, the supervisory authorities of the Member State or Member States where the processor has one or more establishments should not be considered as concerned supervisory authorities when the draft decision concerns only the controller⁴.**

Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered as the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking.

.....

⁴ Further to FR proposal.

- 92) The establishment of supervisory authorities in Member States, empowered to perform their tasks and exercise their functions with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. Member States may establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure.
- 92a) The independence of supervisory authorities should not mean that the supervisory authorities cannot be subjected to control or monitoring mechanism regarding their financial expenditure. Neither does it imply that supervisory authorities cannot be subjected to judicial review.
- 93) Where a Member State establishes several supervisory authorities, it should establish by law mechanisms for ensuring the effective participation of those supervisory authorities in the consistency mechanism. That Member State should in particular designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the mechanism, to ensure swift and smooth co-operation with other supervisory authorities, the European Data Protection Board and the Commission.
- 94) Each supervisory authority should be provided with the (...) financial and human resources, premises and infrastructure, which are necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and co-operation with other supervisory authorities throughout the Union. Each supervisory authority should have a separate annual budget, which may be part of the overall state or national budget.
- 95) The general conditions for the member or members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members should be either appointed by the parliament and/or the government or the head of State of the Member State or by an independent body entrusted by Member State law with the appointment by means of a transparent procedure. In order to ensure the independence of the supervisory authority, the member or members should refrain from any action incompatible with their duties and should not, during their term of office, engage in any incompatible occupation, whether gainful or not. (...)⁵.

⁵ DK suggested deleting this sentence.

- 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, the processing of personal data, carried out by public authorities or private bodies acting in the public interest processing affecting 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 include dealing with 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.
- 96) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For that purpose, this Regulation should oblige and empower the supervisory authorities to co-operate with each other and the Commission, without the need for any agreement between Member States on the provision of mutual assistance or on such cooperation.

- 96a) Where the processing of personal data *takes place* in the context of the activities of an establishment of a controller or processor in the Union and the controller or processor is established in more than one Member State, or where processing taking place in the context of the activities of a single establishment of a controller or processor in the Union substantially affects or is likely to substantially affect data subjects in more than one Member State, the supervisory authority for the main establishment of the controller or processor or for the single establishment of the controller or processor should act as lead authority. It **should** cooperate with the other authorities that are concerned, because the controller has an establishment on the territory of their Member State, because data subjects residing on their territory are substantially affected, or **because** a complaint that has been lodged with them. (...) Also where a data subject not residing in that Member State has lodged a complaint, the supervisory authority to which such complaint has been lodged should also be a concerned supervisory authority. Within its tasks to issue guidelines on any question covering the application of this Regulation, the European Data Protection Board may issue guidelines in particular on the criteria to be taken into account in order to ascertain whether the processing in question substantially affects data subjects in more than one Member State.
- 96b) The lead authority should be competent to adopt binding decisions regarding measures applying the powers conferred on it in accordance with the provisions of this Regulation. In its capacity as lead authority, the supervisory authority should closely involve and coordinate the *concerned* supervisory authorities in the decision-making process. In cases where the decisions is to reject the complaint by the data subject in whole or in part that decision should be adopted by the up supervisory authority at which the complaint has been lodged.
- 96c) The decision should be agreed jointly by the lead supervisory authority and the *concerned* supervisory authorities and should be directed towards the main or single establishment of the controller or processor and be binding on the controller and processor. The controller or processor should take the necessary measures to ensure the compliance with this Regulation and the implementation of the decision notified by the lead supervisory authority to the main establishment of the controller or processor as regards the processing activities in the Union.

- 97) A supervisory authority should not act as lead supervisory authority in local cases where the controller or processor is established in more than one Member State, but the subject matter of the specific processing concerns only processing carried out in a single Member State and involving only data subjects in that single Member State, for example, where the subject matter concerns the processing of employees data in the specific employment context of a Member State. The rules on the lead supervisory authority and the one-stop-shop mechanism should not apply where the processing is carried out by public authorities or private bodies of acting in the public interest. In such cases the only supervisory authority competent to exercise the powers conferred to it in accordance with this Regulation should be the supervisory authority of the Member State where the public authority or body is established.
- 98) (...)
- 99) In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have in each Member State the same tasks and effective powers, including powers of investigation, corrective powers and sanctions, and authorisation and advisory powers, particularly in cases of complaints from individuals, and **without prejudice to the powers of prosecutorial authorities under national law**⁶, to bring infringements of this Regulation to the attention of the judicial authorities and/or engage in legal proceedings. Member States may specify other tasks related to the protection of personal data under this Regulation. The powers of supervisory authorities (...) should be exercised in conformity with appropriate procedural safeguards set out in Union law and national law, impartially, fairly and within a reasonable time. In particular each measure should be appropriate, necessary and proportionate in view of ensuring compliance with this Regulation, taking into account the circumstances of each individual case, respect the right of every person to be heard before any individual measure which would affect him or her adversely is taken and avoid superfluous costs and excessive inconveniences for the persons concerned. Investigatory powers as regards access to premises should be exercised in accordance with specific requirements in national procedural law, such as the requirement to obtain a prior judicial authorisation.

⁶ AT suggestion.

Each legally binding measure of the supervisory authority should be in writing, be clear and unambiguous, indicate the supervisory authority which has issued the measure, the date of issue of the measure, bear the signature of the head or a member of the supervisory authority of a person authorised by him or her, give the reasons for the measure, and refer to the right of an effective remedy. This should not preclude additional requirements pursuant to national procedural law. The adoption of such legally binding decision implies that it may give rise to judicial review in the Member State of the supervisory authority that adopted the decision.

100) (...)⁷.

101) Where the supervisory authority to which the complaint has been lodged is not the lead supervisory authority, the lead supervisory authority should closely co-operate with the supervisory authority to which the complaint has been lodged according to the provisions on co-operation and consistency laid down in this Regulation. In such cases, the lead supervisory authority should, when taking measures intended to produce legal effects, including the imposition of administrative fines, take utmost account of the view of the supervisory authority to which the complaint has been lodged and which should remain competent to carry out any investigation on the territory of its own Member State in liaison with the competent supervisory authority.

⁷ Moved to recital 111.

- 101a) The supervisory authority receiving a complaint or detecting or being informed otherwise of situations that entail possible infringements of the Regulation should seek an amicable settlement and, if this proves unsuccessful, exercise its full range of powers in cases where another supervisory authority should act as a lead supervisory authority for the processing activities of the controller or processor but the concrete subject matter of a complaint or the possible infringement concerns only processing activities of the controller or processor in the one Member State where the complaint has been lodged or the possible infringement detected and the matter does not substantially affect or is not likely to substantially affect data subjects in other Member States. This should include specific processing carried out in the territory of the Member State of the supervisory authority or with regard to data subjects on the territory of that Member State; or to processing that is carried out in the context of an offer of goods or services specifically aimed at data subjects in the territory of the Member State of the supervisory authority; or that has to be assessed taking into account relevant legal obligations under national law.
- 102) Awareness raising activities by supervisory authorities addressed to the public should include specific measures directed at controllers and processors, including micro, small and medium-sized enterprises, as well as (...) individuals in particular in the educational context.
- 103) The supervisory authorities should assist each other in performing their tasks and provide mutual assistance, so as to ensure the consistent application and enforcement of this Regulation in the internal market. Where a supervisory authority requesting mutual assistance, in the case of no response of the requested supervisory authority within one month of receiving the request, adopts a provisional measure, such provisional measure should be duly justified and only of a temporary nature.
- 104) Each supervisory authority should have the right to participate in joint operations between supervisory authorities. The requested supervisory authority should be obliged to respond to the request in a defined time period.

- 105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities (...) ⁸ should be established. This mechanism should in particular apply where a supervisory authority intends to adopt a measure intended to produce legal effects as regards processing operations which substantially affect a significant number of data subjects in several Member States (...). It should also apply where any *concerned* supervisory authority or the Commission requests that such matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.
- 106) In application of the consistency mechanism, the European Data Protection Board should, within a determined period of time, issue an opinion, if a (...) majority of its members so decides or if so requested by any *concerned* supervisory authority or the Commission. The European Data Protection Board should also be empowered to adopt legally binding decisions in case of disputes between supervisory authorities. For that purposes it should issue, with a two-third majority of its members, legally binding decisions in clearly defined cases where there are conflicting views among supervisory authorities in particular in the cooperation mechanism between the lead supervisory authority and *concerned* supervisory authorities on the merits of the case, notably whether there is an infringement of this Regulation or not (...).
- 107) (...)
- 108) There may be an urgent need to act in order to protect the rights and freedoms of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. Therefore, a supervisory authority should be able to adopt provisional measures with a specified period of validity when applying the consistency mechanism.

⁸ Deleted at the request of HU.

- 109) The application of this mechanism should be a condition for the (...) lawfulness of a (...) measure intended to produce legal effects by a supervisory authority in those cases where its application is mandatory. In other cases of cross-border relevance, the cooperation mechanism between the lead supervisory authority and concerned supervisory authorities should be applied and mutual assistance and joint operations might be carried out between the *concerned* supervisory authorities on a bilateral or multilateral basis without triggering the consistency mechanism.
- 110) In order to promote the consistent application of this Regulation, the European Data Protection Board should be set up as an independent body of the Union. To fulfil its objectives, the European Data Protection Board should have legal personality. The European Data Protection Board should be represented by its Chairperson. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State or his or her representative and of the European Data Protection Supervisor. The Commission should participate in its activities without voting rights. The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the Commission, in particular on the level of protection in third countries or international organisations, and promoting co-operation of the supervisory authorities throughout the Union. The European Data Protection Board should act independently when exercising its tasks.

- 111) Every data subject should have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, and have the right to an effective judicial remedy in accordance with Article 47 of the Charter of Fundamental Rights if the data subject considers that his or her rights under this Regulation are infringed or where the supervisory authority does not act on a complaint, partially or wholly rejects or dismisses a complaint or does not act where such action is necessary to protect the rights of the data subject. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can be completed also electronically, without excluding other means of communication.
- 112) Where a data subject considers that his or her rights under this Regulation are infringed, he or she should have the right to mandate a body, organisation or association which aims to protect the rights and interests of data subjects in relation to the protection of their data and is constituted according to the law of a Member State, to lodge a complaint on his or her behalf with a supervisory authority or exercise the right to a judicial remedy on behalf of data subjects. Such a body, organisation or association should have the right to lodge, independently of a data subject's complaint, a complaint where it has reasons to consider that a personal data breach referred to in Article 32(1) has occurred and Article 32(3) does not apply.

Article 4

Definitions

(13) ‘main establishment’ means⁹

- as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes (...) and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in this case the establishment having taken such decisions shall be considered as the main establishment¹⁰.
- 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 to the extent that the processor is subject to specific obligations under this Regulation;

(19a) ‘concerned supervisory authority’ means

- a supervisory authority which is concerned by the processing because:
 - a) the controller or processor is established on the territory of the Member State of that supervisory authority;
 - b) data subjects residing in this Member State are substantially¹¹ affected or likely to be substantially affected by the processing; or
 - c) the underlying complaint has been lodged to that supervisory authority.

⁹ AT remarked that, in view technological developments, it was very difficult to pinpoint the place of processing and , supported by ES, HU, PL expressed a preference for a formal criterion, which referred to the incorporation of the controller (AT, PL). AT pointed out that such criterion would avoid the situation that, depending on the processing activity concerned, there would be a different main establishment and consequently a different lead DPA.

¹⁰ BE reservation.

¹¹ IE and UK would prefer the term 'materially'.

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

- (a) processing which takes place in the context of the activities of establishments in more than one Member State of a controller **or a processor** in the Union and the controller or processor is established in more than one Member State; or
- (b) 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 substantially affect¹² data subjects in more than one Member State.

(19c) “relevant and reasoned objection” means :

an objection as to whether there is an infringement of this Regulation or not, or, as the case may be, whether the envisaged action in relation to the controller or processor is in conformity with the Regulation. The **objection shall clearly demonstrate**¹³ the significance of the risks posed by the draft decision as regards the fundamental rights and freedoms of data subjects and where applicable, the free flow of personal data.

¹² Several Member States thought that this should be clarified in recital: CZ, FI, HU, SE.

¹³ Further to CZ proposal.

CHAPTER VI
INDEPENDENT SUPERVISORY AUTHORITIES
SECTION 1
INDEPENDENT STATUS

Article 46

Supervisory authority¹⁴

1. Each Member State shall provide that one or more independent public authorities are responsible for monitoring the application of this Regulation.
- 1a. Each supervisory authority shall contribute to the consistent application of this Regulation throughout the Union (...)¹⁵. For this purpose, the supervisory authorities shall co-operate with each other and the Commission in accordance with Chapter VII¹⁶.
2. Where in a Member State more than one supervisory authority are established, that Member State shall designate the supervisory authority which shall represent those authorities in the European Data Protection Board and shall set out the mechanism to ensure compliance by the other authorities with the rules relating to the consistency mechanism referred to in Article 57.
- [3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to this Chapter, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them¹⁷].

¹⁴ At the request of IT, COM clarified that this DPA could be the same as the one designated/set up under the future Data Protection Directive. ES asked for clarification that a DPA may be composed of more members, but t this is already sufficiently clear from the current text. DE indicated that it would require an intra-German consistency mechanism between the its various DPAs.

¹⁵ UK sought reassurance that the supervisory authority could also be given a wider remit, such as ensuring the freedom of information. DE remarked that it would require an intra-German consistency mechanism between the its various DPAs.

¹⁶ EE, HU, LU, SI and UK thought there was no reason to mention this duty of co-operation here.

¹⁷ DE, FR NL, EE that thought that this paragraph could be moved to the final provisions.

Article 47¹⁸

Independence

1. Each supervisory authority shall act with complete¹⁹ independence in performing the duties²⁰ and exercising the powers entrusted to it in accordance with this Regulation.
2. The member or members of each supervisory authority shall, in the performance of their duties and exercise of their powers in accordance with this Regulation, remain free from external influence, whether direct or indirect²¹ and neither seek nor take instructions from anybody²².
3. (...) ²³
4. (...) ²⁴
5. Each Member State shall ensure that each supervisory authority is provided with the (...) human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and exercise of its powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board²⁵.

¹⁸ FR suggested merging articles 46, 47 and 48 in order to simplify the wording.

¹⁹ EE, LU, SK and SI suggested deleting the word 'completely'.

²⁰ GR scrutiny reservation.

²¹ BE scrutiny reservation.

²² IE reservation: IE thought the latter part of this paragraph was worded too strongly. There are many cases where on other matters the DPA is subject to instructions (e.g. health and safety or employment matters).

²³ AT, BE, DE and HU would prefer to reinstate this text. CZ, EE and SE were satisfied with the deletion.

²⁴ COM and DE, AT reservation on deletion of paragraphs 3 and 4.

²⁵ This paragraph was criticised for being too prescriptive (FR, NL, SE, SK) and too vague (LV, UK). IT raised the question of EU funding. AT thought the recital should refer to minimum requirements.

6. Each Member State shall ensure that each supervisory authority has its own staff which shall (...) be subject to the direction of the member or members²⁶ of the supervisory authority.
7. Member States shall ensure that each supervisory authority is subject to financial control²⁷ which shall not affect its independence. Member States shall ensure that each supervisory authority has separate, public, annual budgets, which may be part of the overall state or national budget.

Article 48

General conditions for the members of the supervisory authority

1. Member States shall provide that the member or members²⁸ of each supervisory authority must be appointed (...) by the parliament and/or the government or the head of State of the Member State concerned or by an independent body entrusted by Member State law with the appointment by means of a transparent procedure²⁹.
2. The member or members shall have the qualifications, experience and skills required to perform their duties and exercise their powers³⁰.

²⁶ BG, DE, LV, NO, PT and UK questioned who were to be considered as members of the DPA and argued that the regulation should allow different models. The question how to distinguish between members and staff was also raised in this context. IT thought EU resources could also be considered.

²⁷ EE reservation.

²⁸ DE, LV, NO, PT and UK questioned would were to be considered as members of the DPA and argued that the regulation should allow different models.

²⁹ Several delegations (FR, SE, SI and UK) thought that other modes of appointment should be allowed for. NL, LU and UK thought this should not be governed by the Regulation. FR (and RO) thought that a recital should clarify that "independent body" also covers courts.

³⁰ As several delegations (DE, ES, SE) thought that also the appointment of persons with prior data protection experience should be allowed for, this requirement has been deleted. CZ indicated that independence should not be a requirement for appointment, but for the functioning of DPA members.

3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement³¹ in accordance with the law of the Member State concerned³².
4. (...)
5. (...)³³.

Article 49

Rules on the establishment of the supervisory authority³⁴

1. Each Member State shall provide by law for:
 - (a) the establishment (...) of each supervisory authority;
 - (b) the qualifications (...) required to perform the duties of the members of the supervisory authority³⁵;

³¹ UK thought dismissal for misconduct needed to be listed here as well. CZ stated that the terms resignation or compulsory retirement were unknown under CZ law.

³² COM reservation and DE scrutiny reservation on the expression "in accordance with the law of the Member States concerned". The question is whether this means that the Member States are being granted the power to define the duties further or whether the wording should be understood as meaning that only constitutional conditions or other legal framework conditions (e.g. civil service law) should be taken into account. DE and HU also suggest that rules in the event of death or invalidity be added (see, for example, Article 42(4) of Regulation (EC) No 45/2001) and also suggests referring to a procedure for the nomination of a representative in case the member is prevented from performing his or her duties.

³³ BE, CZ, EE, FR, LU, NL, NO, PT, SE, SK, UK are of the opinion that paragraphs 4 and 5 interfere too much with national law. CZ, NO, SE also see no need for paragraph 3. COM, DE and AT scrutiny reservation on deletion of paragraphs 4 and 5.

³⁴ AT scrutiny reservation. DE and FR queried which was the leeway given to Member States by this article as compared to the rules flowing from the previous Articles from the Regulation. Several delegations (FR, GR, SE, SI UK) thought that some of these rules, in particular those spelled out in subparagraphs (c) and (d) were too detailed.

³⁵ IE reservation: IE thought these qualifications need not be laid down in law.

- (c) the rules and procedures for the appointment of the member or members of each supervisory authority (...);
- (d) the duration of the term of the member or members of each supervisory authority which shall not be³⁶ (...) less than four years, except for the first appointment after entry into force of this Regulation, part of which may take place for a shorter period where this is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure³⁷;
- (e) whether and, if so, for how many terms³⁸ the member or members of each supervisory authority shall be eligible for reappointment;

³⁶ DE proposed adding a maximum term of 8 years; IT referred to 7 years.

³⁷ The last part of this point might need to be moved to the final provisions.

³⁸ IT thought a maximum term should be set.

(f) the (...) conditions governing the obligations of the member or members and staff of each supervisory authority, prohibitions on actions and occupations incompatible therewith during and after the term of office and rules governing the cessation of employment³⁹;

(g) (...)⁴⁰.

2. The member or members and the staff of each supervisory authority shall, in accordance with Union or Member State law, be subject to a duty of professional secrecy *both during and after their term of office*.⁴¹, with regard to any confidential information which has come to their knowledge in the course of the performance of their (...) duties or exercise of their powers⁴²

Article 50

*Professional secrecy*⁴³

(...)

³⁹ SE thought that subparagraphs (b), (c) and (f) should be deleted or substantially redrafted as they were too detailed.

⁴⁰ CZ, NL, DE scrutiny reservation on deletion of this point.

⁴¹ BE proposed adding an additional paragraph on the need to distinguish investigating and sanctioning powers, but this is dealt with by the general safeguard clause in Article 53(5). This is also true for the DE proposal for adding language concerning the duty to report an offence under national law and the privilege against self-incrimination.

⁴² COM and AT scrutiny reservation on adding the provision on professional secrecy to Article 49, which concerns rules on the establishment of supervisory authorities.

⁴³ UK pointed out that also transparency concerns should be taken into account. Many delegations (CZ, DE, FR, FI, GR, IT, SE, SI, UK) raised practical questions as to the scope and the exact implications of this article. All thought that the rules on professional secrecy should be left to national law and hence the suggestion by CZ (supported by EE, SE, SI and RO) to move this to Article 49 was followed. COM and DE scrutiny reservation on moving this provision to Article 49.

SECTION 2

COMPETENCE, TASKS AND POWERS

Article 51

Competence

1. Each supervisory authority shall be competent perform the tasks and exercise the powers conferred on it in accordance with this Regulation on the territory of its own Member State. (...) ⁴⁴
2. Where the processing is carried out by public authorities or private bodies acting on the basis of points (c) or (e) of Article 6(1) (...), the supervisory authority of the Member State concerned shall be (...) competent⁴⁵. **In such cases Article 51a does not apply⁴⁶.**
3. Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity⁴⁷. (...).

Article 51a

Competence of the lead supervisory authority

1. Without prejudice to Article 51, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the transnational processing of this controller or processor in accordance with the procedure in Article 54a.

⁴⁴ Some Member States (ES) preferred to maintain the explanatory language regarding competence here and not merely in recital 95a.

⁴⁵ COM opposes the exclusion of private bodies from the one-stop mechanism, pointing to the example of cross-border infrastructure provided by private bodies in the public interest. IE, FR and FI preferred to refer to 'processing carried out by public authorities and bodies of a Member State or by private bodies acting on the basis of a legal obligation to discharge functions in the public interest'.

⁴⁶ Further to DE proposal.

⁴⁷ FR, HU, NL, RO and UK scrutiny reservation. DE suggested adding "other matters assigned to courts for independent performance. The same shall apply insofar as judicially independent processing has been ordered, approved or declared admissible", as the derogation must apply whenever courts' work falls within the scope of their institutional independence, which is not only the case in the core area of judicial activity but also in areas where courts are assigned tasks specifically for independent performance.

2. (...)
- 2a. By derogation from paragraph 1, each supervisory authority shall be competent to deal with a complaint lodged or to deal with a possible infringement of this Regulation, if the subject matter of the case (...) relates *only* to an establishment in its Member State or **substantially affects**⁴⁸ data subjects only in its Member State.
- 2b. In the cases referred to in paragraph 2a, the supervisory authority shall inform the lead supervisory authority without delay on (...) this matter. Within a period of three weeks after being informed the lead supervisory authority shall decide:
- a) whether it will deal with the case in accordance with the procedure provided in Article 54a; or
 - b) the supervisory authority which informed **the lead supervisory authority** will deal with the case according to Articles (...) 55 and 56 **and submit to the lead supervisory authority a draft decision which will be adopted according to paragraphs 4a, 4b, 4bb of Article 54a. In case of disagreement between the supervisory authorities, the lead shall deal with the case in accordance with the procedure provided in Article 54a**⁴⁹.
3. *The lead supervisory authority shall be the sole interlocutor of the controller or processor for their transnational processing.*
4. (...).

Article 51b

Identification of the supervisory authority competent for the main establishment

(...)

⁴⁸ CZ proposal to align the wording to that of recital 101a.

⁴⁹ Further to FR proposal, supported by DE.

Article 51c

One-stop shop register

(...)⁵⁰

Article 52

Tasks⁵¹

1. Without prejudice to other tasks set out under this Regulation, each supervisory authority shall on its territory⁵²:
 - (a) monitor and enforce the application of this Regulation;
 - (aa) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention;
 - (ab) advise, in accordance with national law, the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data⁵³;
 - (ac) promote the awareness of controllers and processors of their obligations under this Regulation;

⁵⁰ AT reservation on the deletion of Articles 51b and 51c.

⁵¹ DE, IT, AT, PT and SE scrutiny reservation. UK thinks the term 'functions' rather than 'duties' should be used.

⁵² A recital should be drafted in order to clarify that Member States may allocate other tasks to DPAs. DE thought it preferable to use the words 'at least' in the chapeau. See also new point (g) in paragraph 1.

⁵³ NL reservation.

- (ad) upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end;
- (b) deal with complaints⁵⁴ lodged by a data subject, or body, organisation or association representing a data subject in accordance with Article 73, and investigate, to the extent appropriate, the subject matter of the complaint and inform the data subject or the body, organisation or association of the progress and the outcome of the investigation within a reasonable period , in particular if further investigation or coordination with another supervisory authority is necessary;
- (c) cooperate with, including sharing information, and provide mutual assistance to other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation;
- (d) conduct investigations on the application of this Regulation, including on the basis of a information received from another supervisory or other public authority;
- (e) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;
- (f) adopt standard contractual clauses referred to in Article 26(2c);
- (fa) establish and make a list in relation to the requirement for data protection impact assessment pursuant to Article 33(2a);
- (g) give advice on the processing operations referred to in Article 34(3);
- (ga) encourage the drawing up of codes of conduct pursuant to Article 38;
- (gb) promote the establishment of data protection certification mechanisms and of data protection seals and marks;

⁵⁴ IT scrutiny reservation on the term complaint; UK thought the emphasis should be on complaint-resolution.

- (gc) where applicable, carry out a periodic review of certifications issued in accordance with Article 39(4);
 - (h) draft and publish the criteria for accreditation of a body for monitoring codes of conduct pursuant to Article 38a and of a certification body pursuant to Article 39a;
 - (ha) conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 38a and of a certification body pursuant to Article 39a;
 - (hb) authorise contractual clauses referred to in Article 42(2)(d);
 - (i) approve binding corporate rules pursuant to Article 43;
 - (j) contribute to the activities of the European Data Protection Board;
 - (k) fulfil any other tasks related to the protection of personal data.
2. (...)
 3. (...).
 4. Each supervisory authority shall facilitate the submission of complaints referred to in point (b) of paragraph 1, by measures such as providing a complaint submission form which can be completed also electronically, without excluding other means of communication.
 5. The performance of the tasks of each supervisory authority shall be free of charge for the data subject and for the data protection officer, if any.
 6. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may refuse to act on the request⁵⁵. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request⁵⁶.

⁵⁵ EE pointed out that under its constitution this required an act of parliament. NL and RO also thought this should be left to Member States.

⁵⁶ DE, NL and SE reservation: this could be left to general rules.

Article 53

*Powers*⁵⁷

1. Each Member State shall provide by law that its supervisory authority shall have at least⁵⁸ the following investigative powers:
 - (a) to order the controller and the processor, and, where applicable, the controller's representative to provide any information it requires for the performance of its duties;
 - (aa) to carry out investigations in the form of data protection audits⁵⁹;
 - (ab) to carry out a review on certifications issued pursuant to Article 39(4);
 - (b) (...)
 - (c) (...)
 - (d) to notify the controller or the processor of an alleged infringement of this Regulation⁶⁰ (...);
 - (da) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its duties;
 - (db) to obtain access to any premises of the controller and the processor , including to any data processing equipment and means, in conformity with Union law or Member State procedural law.

⁵⁷ DE, NL, RO, PT and SE scrutiny reservation; SE thought this list was too broad. Some Member States were uncertain (CZ, RO and UK) or opposed (DE, DK, and IE) to categorising the DPA powers according to their nature.

⁵⁸ Further to BG suggestion, supported by EE, IT, to make this an indicative list. RO argued in favour of the inclusion of an explicit reference to the power of DPAs to issue administrative orders regarding the uniform application of certain data protection rules. COM and ES scrutiny reservation on 'at least' in paragraphs 1 and 1a.

⁵⁹ CZ, IT, PL and SK scrutiny reservation. CZ and PL pleaded for a recital explaining that audit could be understood as inspection.

⁶⁰ BE suggested adding the power to oblige the controller to communicate the personal data breach to the data subject.

- 1a. (...).
- 1b. Each Member State shall provide by law that its supervisory authority shall have the following corrective powers:
- (a) to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;
 - (b) to issue reprimands⁶¹ to a controller or processor where processing operations have infringed provisions of this Regulation⁶²;
 - (c) (...);
 - (ca) to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;
 - (d) to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period; in particular by ordering the rectification, restriction or erasure of data pursuant to Articles 16, 17 and 17a and the notification of such actions to recipients to whom the data have been disclosed pursuant to Articles 17(2a) and 17b;
 - (e) to impose a temporary or definitive limitation on processing **and to forbid the processing on which the authority is consulted pursuant to paragraph 3 of Article 34;**
 - (f) to order the suspension of data flows to a recipient in a third country or to an international organisation⁶³;

⁶¹ PL and SK scrutiny reservation.

⁶² PL scrutiny reservation on points (a) and (b).

⁶³ SK reservation.

- (g) to impose an administrative fine pursuant to Articles 79 and 79a⁶⁴, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case⁶⁵.
- 1c. Each Member State shall provide by law that its supervisory authority shall have the following authorisation and advisory powers:
- (a) to advise the controller in accordance with the prior consultation procedure referred to in Article 34⁶⁶,
 - (aa) to issue, on its own initiative or on request, opinions to the national parliament, the Member State government or, in accordance with national law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data;
 - (ab) to authorise processing referred to in Article 34(7a), if the law of the Member State requires such prior authorisation;
 - (ac) to issue an opinion and adopt draft codes of conduct pursuant to Article 38(2);
 - (ad) to accredit certification bodies under the terms of Article 39a;
 - (ae) to issue certifications in accordance with Article 39(2a);
 - (b) authorise standard data protection clauses referred to in point (c) of Article 42(2);
 - (c) authorise contractual clauses referred to in point (d) of Article 42(2);
 - (d) approve binding corporate rules pursuant to Article 43.

⁶⁴ DK constitutional reservation on the introduction of administrative fines, irrespective of the level of the fines.

⁶⁵ DE reservation on points (e), (f) and (g) insofar as these powers could be applied vis-à-vis public authorities, which it considered as unacceptable.

⁶⁶ NL scrutiny reservation. This was placed in the wrong category.

2. The exercise of the powers conferred on the supervisory authority pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedy and due process, set out in Union and Member State law in accordance with the Charter of Fundamental Rights of the European Union.⁶⁷
3. Each Member State shall provide by law that its supervisory authority shall have the power to bring infringements of this Regulation to the attention of the judicial authorities and(...), where appropriate, to commence or engage otherwise in legal proceedings⁶⁸, in order to enforce the provisions of this Regulation⁶⁹.
4. (...)
5. (...)

Article 54

Activity Report

Each supervisory authority shall draw up an annual report of its activities. The report shall be transmitted to the national Parliament, the government and other authorities as designated by national law. It shall be made available to the public, the European Commission and the European Data Protection Board.

⁶⁷ CY, ES, FR, IT and RO thought this could be put in a recital as these obligations were binding upon the Member States at any rate. COM could accept this.

⁶⁸ DE, FR and RO reservation on proposed DPA power to engage in legal proceedings. UK scrutiny reservation. CZ and HU reservation on the power to bring this to the attention of the judicial authorities.

⁶⁹ DE thought para. 3 should be deleted.

CHAPTER VII⁷⁰

CO-OPERATION AND CONSISTENCY

SECTION 1

CO-OPERATION

Article 54a

*Cooperation between the lead supervisory authority and concerned supervisory authorities*⁷¹

1. The lead supervisory authority (...) shall cooperate with the **other** concerned supervisory authorities in accordance with this article in an endeavour to reach consensus (...). The lead supervisory authority and the concerned supervisory authorities shall exchange all relevant information with each other.
- 1a. The lead supervisory authority may request at any time **other** supervisory authorities concerned 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.
1. The lead supervisory authority (...) shall, without delay communicate the relevant information on the matter to the concerned supervisory authorities. It shall **without delay** submit a draft decision to the concerned supervisory authorities for their opinion and take due account of their views.
- 2a. (...)

⁷⁰ AT and FR scrutiny reservation on Chapter VII.

⁷¹ BE, CZ, CY, DE, EE, FR, FI, IE, LU, RO, PT and NL scrutiny reservation. IE pointed out that in the case of personal data processed by social media or other internet platforms, all 28 MS DPAs would be 'concerned'. LU and NL doubted that one DPA concerned would be sufficient to trigger the consistency mechanisms. BE, FR, PL and LU expressed a preference for amicable settlements.

2. Where any of the *concerned* supervisory authorities within a period of four weeks after having been consulted in accordance with paragraph 2 to the draft decision, expresses a relevant and reasoned objection, the lead supervisory authority shall, if it does not follow the objection or is of the opinion it is not relevant and reasoned, submit the matter to the consistency mechanism referred to in Article 57. (...)

[ALTERNATIVE

Any of the *concerned* supervisory authorities shall have the right, within a period of four weeks after having been consulted in accordance with paragraph 2 to the draft decision, to express a relevant and reasoned objection. In case there is more than one concerned supervisory authority and the lead supervisory authority *does not follow the objection*, it shall submit the matter to the consistency mechanism referred to in Article 57 only if at least one third of the concerned supervisory authorities (...) **objects** to the draft decision.]

- 3a. Where the lead supervisory authority intends to follow the objection made, it shall submit to the **other** concerned supervisory authorities a revised draft decision for their opinion. This revised draft decision shall be subject to the procedure referred to in paragraph 3 within a period of two weeks⁷².
4. Where [no] *concerned* supervisory authority has objected to the draft decision submitted by the lead supervisory authority within the period referred to in paragraphs 3 and 3a, the lead supervisory authority and the *concerned* supervisory authorities shall be deemed to be in agreement with this draft decision and *shall be bound by it*⁷³.
- 4a. The lead supervisory authority shall adopt *and notify* the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the concerned supervisory authorities and the European Data Protection Board of the decision in question including a summary of the relevant facts and grounds. The supervisory authority to which a complaint has been lodged shall inform the complainant on the decision.

⁷² FR thought that care should be taken to avoid that this procedure continues too long.

⁷³ DK and NO thought its meaning should be clarified in a recital.

- 4b. By derogation from paragraph 4a, where a complaint is dismissed or rejected, the supervisory authority to which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.
- 4bb. Where the lead supervisory authority and the concerned supervisory authorities are in agreement to dismiss or reject parts of a complaint and to act on other parts of **that** complaint, a separate decision shall be adopted for each of those parts of the matter. The lead supervisory authority shall adopt the decision for the part concerning actions in relation to the controller 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 **that** complaint and notify it on **that** complainant⁷⁴.
- 4c. After being notified of the decision of the lead supervisory authority pursuant to paragraph 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 inform the *concerned* supervisory authorities .
- 4d. Where, in exceptional circumstances, a *concerned* supervisory authority 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 **other** *concerned* supervisory authorities shall supply the information required under this Article (...) to each other by electronic means, using a standardised format.

⁷⁴ SI scrutiny reservation. PL reservation on paras 4b and 4bb: PL and FI thought para. 4bb should be deleted as it was opposed to the concept of a split decision. IT thought para 4bb overlapped with para 4b.

Article 54b

Cooperation between the lead supervisory authority and the other supervisory authorities concerned in individual cases of possible non-compliance with the Regulation

(...)

Article 55

Mutual assistance⁷⁵

1. Supervisory authorities shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and investigations. (...)
2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without undue delay and no later than one month⁷⁶ after having received the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation (...).
3. The request for assistance shall contain all the necessary information⁷⁷, including the purpose of the request and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.

⁷⁵ DE, NL SE and UK scrutiny reservation. Several other delegations indicated that further clarity was required on this fundamental Article and the concept of mutual assistance, and announced text proposals: EE pleaded for much more detailed rules on mutual assistance, as is already the case in civil and criminal law. AT, supported by DE, declared that it had no specific problem with this Article, but that, in general, there was a need to follow developments in relation to CoE Convention No. 108.

⁷⁶ ES had suggested reducing it to 15 days. PT supported the suggestion of two weeks, with a possibility of adding more time, if needed. RO, on the other hand, found one month too short, and requested SE remarked that this timeline might be unrealistic in some cases. COM indicated that it was only a deadline for replying, but that paragraph 5 allowed longer periods for executing the assistance requested. UK requested a timetable, indicating deadlines.

⁷⁷ EE and SE scrutiny reservation.

4. ⁷⁸A supervisory authority to which a request for assistance is addressed may not refuse to comply with it unless:
- (a) it is not competent for the subject-matter of the request or for the measures it is requested to execute⁷⁹; or
 - (b) compliance with the request would be incompatible with the provisions of this Regulation or with Union or Member State law to which the supervisory authority receiving the request is subject.
5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress or the measures taken in order to respond to the request. In cases of a refusal under paragraph 4, it shall explain its reasons for refusing the request⁸⁰.
6. Supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means⁸¹, using a standardised format.
7. No fee shall be charged for any action taken following a request for mutual assistance. Supervisory authorities may agree with other supervisory authorities rules for indemnification by other supervisory authorities for specific expenditure arising from the provision of mutual assistance in exceptional circumstances⁸².

⁷⁸ SE indicated further scrutiny was required as to whether other grounds of refusal were required. UK thought that this paragraph was drafted in much too absolute a fashion.

⁷⁹ Several delegations stressed the importance of establishing which is the competent DPA: DE, EE, SE, SI, NL and IT asked for further clarification.

⁸⁰ RO scrutiny reservation.

⁸¹ PT (supported by RO) suggested adding "or other means if for some reason, electronic means are not available, and the communication is urgent".

⁸² PT, UK and DE asked for clarification in relation to the resources needed / and estimate of costs.

8. Where a supervisory authority does not provide the information referred to in paragraph 5 within one month of receiving the request of another supervisory authority, the requesting supervisory authority may adopt a provisional measure⁸³ on the territory of its Member State in accordance with Article 51(1) and shall submit the matter to the European Data Protection Board (...) in accordance with the consistency mechanism referred to in Article 57⁸⁴.
9. The supervisory authority shall specify the period of validity of such a provisional measure which shall not exceed three months⁸⁵. The supervisory authority shall, without delay, communicate such a measure, together with its reasons for adopting it, to the European Data Protection Board (...) in accordance with the consistency mechanism referred to in Article 57.
10. The Commission may specify the format and procedures for mutual assistance referred to in this article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2)⁸⁶.

⁸³ LU requested more clarification with regard to what would happen if this provisional measure were not confirmed.

⁸⁴ EE, FR, RO and UK reservation. DE scrutiny. UK did not find the drafting sufficiently clear, for instance regarding which authority would be competent and action on other Member States territory. COM specified that this Article would apply specifically in bilateral relations (whereas Article 56 would cover joint operations), the underlying philosophy being to avoid extraterritorial activity.

⁸⁵ DE asked for deletion of this deadline; the measure should be withdrawn if the conditions for imposing it were no longer fulfilled.

⁸⁶ DE, IT, EE, CZ and NL reservation. EE questioned whether implementing acts were necessary for this purpose. ES reminded about its proposal for an Article 55a.

Article 56

*Joint operations of supervisory authorities*⁸⁷

1. The supervisory authorities may, where appropriate, conduct joint operations, including joint investigations and joint enforcement measures in which members or staff from other Member States' supervisory authorities are involved.
2. In cases where the controller or processor has establishments in several Member States or where [a significant number of⁸⁸] data subjects in more than one Member State are likely to be substantially affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in the joint operations, as appropriate. The competent supervisory⁸⁹ authority shall invite the supervisory authority of each of those Member States to take part in the joint operations concerned and respond without delay to the request of a supervisory authority to participate⁹⁰.
3. A supervisory authority may, in compliance with its own Member State law, and with the seconding supervisory authority's authorisation, confer powers, including investigative 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 permits, allow the seconding supervisory authority's members or staff to exercise their investigative powers in accordance with the law of the Member State of the seconding supervisory authority. Such investigative powers may be exercised only under the guidance and in the presence of members or staff of the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the host supervisory authority's national law. (...) ⁹¹

⁸⁷ IT requested a specification in this Article that this was also about multilateral cooperation. FR asked for a clearer distinction between Articles 55 and 56. DE, EE, PT and UK scrutiny reservation. Several delegations (DE, LV, NL, SE, IT, UK) supported the idea of joint operations, but thought more details needed to be clarified. DE and EE referred to a criminal law model of a joint investigation team. LU indicated it was not convinced of the added value of joint investigations. UK requested to make sure that these mechanisms would work in practice and drew the attention to the fact that paragraphs 1 and 3 were discretionary, whereas paragraph 2 was binding, and that this was confusing and potentially contradictory.

⁸⁸ COM reservation; more criteria should be added. IT, supported by FR, BE and CZ suggested stressing the multilateral aspect by adding text.

⁸⁹ LU asked for a clarification of who would be the lead authority. UK stated that it seemed like a mix of Art. 51(1) and 51(2) competences.

⁹⁰ SE entered a favourable scrutiny reservation on this paragraph.

⁹¹ DE, LU, PT and COM scrutiny reservation on the deletion of this last phrase.

- 3a. Where, in accordance with paragraph 1, staff of a seconding supervisory authority are operating in another Member State, the Member State of the host supervisory authority shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
- 3b. The Member State in whose territory the damage was caused shall make good such damage under the conditions applicable to damage caused by its own staff. The Member State of the seconding supervisory authority whose staff has caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the (...) persons entitled on their behalf.
- 3c. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3b, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement of damages [it has sustained] from another Member State⁹².
4. (...)
5. ⁹³Where 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 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 shall not exceed three months. The supervisory authority shall, without delay, communicate such a measure, together with its reasons for adopting it, to the European Data Protection Board (...) ⁹⁴ in accordance with the consistency mechanism referred to in Article 57.

⁹² UK reservation on paras. 3a, 3b and 3c.

⁹³ NL asked whether the measures of paragraphs 5 and 6 were really necessary. EE suggested a merger of the two paragraphs.

⁹⁴ Deleted at the request of HU.

SECTION 2

CONSISTENCY⁹⁵

Article 57

Consistency mechanism⁹⁶

1. For the purpose set out in Article 46(1a), the supervisory authorities shall co-operate with each other through the consistency mechanism as set out in this section⁹⁷.
2. The European Data Protection Board shall (...) issue an opinion whenever a competent supervisory authority intends to adopt any of the measures below (...). To that end, the competent supervisory authority shall communicate the draft decision to the European Data Protection Board, when it:
 - (a) (...);
 - (b) (...);
 - (c) aims at adopting a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 33(2b); or
 - (ca) concerns a matter pursuant to Article 38(2b) whether a draft code of conduct or an amendment or extension to a code of conduct is in compliance with this Regulation;
or
 - (cb) aims at approving the criteria for accreditation of a body pursuant to paragraph 3 of Article 38a or a certification body pursuant to paragraph 2a of Article 39 or paragraph 3 of Article 39a;

⁹⁵ BE, IT, SK and SI scrutiny reservation. BE reservation on the time required for a consistency mechanism procedure. DE parliamentary reservation and BE and UK reservation on the role of COM in the consistency mechanism.

⁹⁶ EE, FI, LU, NL and UK scrutiny reservation.

⁹⁷ CZ, DE, ES and RO thought that supervisory authorities of third countries for which there is an adequacy decision should be involved in the consistency mechanism; if third countries participated in the consistency mechanism, they would be bound by uniform implementation and interpretation.

- (d) aims at determining standard data protection clauses referred to in point (c) of Article 42(2); or
- (e) aims to authorising contractual clauses referred to in point (d) of Article 42(2); or
- (f) aims at approving binding corporate rules within the meaning of Article 43.

3. The European Data Protection Board shall adopt a binding decision in the following cases:

- a) Where, in a case referred to in paragraph 3 of Article 54a, a *concerned* supervisory authority has expressed a relevant and reasoned objection to a draft decision of the lead authority or the lead authority has rejected an objection as being not relevant and/or reasoned. The binding decision shall concern all the matters which are the subject of the relevant and reasoned objection;
- b) Where, there are conflicting views on which of the *concerned* supervisory authorities is competent for the main establishment;
- c) (...)
- d) Where a competent supervisory authority does not request the opinion of the European Data Protection Board in the cases mentioned in paragraph 2 of this Article, or does not follow the opinion of the European Data Protection Board issued as per Article 58. In that case, any concerned supervisory authority or the Commission may communicate the matter to the European Data Protection Board.

4. Any supervisory authority, the Chair of the European Data Protection Board or the Commission may request that any matter of general application or producing effects in more than one Member State be examined by the European Data Protection Board with a view to obtaining an opinion, in particular:

a) Where a competent supervisory authority does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.⁹⁸ (...) ⁹⁹

5. Supervisory authorities and the Commission shall electronically communicate to the European Data Protection Board, using a standardised format any relevant information, including as the case may be a summary of the facts, the draft decision, the grounds which make the enactment of such measure necessary, and the views of other concerned supervisory authorities.
6. The chair of the European Data Protection Board shall without undue delay electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it using a standardised format. The secretariat of the European Data Protection Board shall, where necessary, provide translations of relevant information.

Article 58

Opinion by the European Data Protection Board¹⁰⁰

1. (...)
2. (...)
3. (...)
4. (...)
5. (...)
6. (...)

⁹⁸ LU proposed restricting this to cases where the coordination mechanism implemented by the competent authority did not allow for a solution to be reached; ES referred to cases where the other authorities did not agree with the proposal of the competent(/lead) authority. DE preferred reinstating this point to paragraph 3.

⁹⁹ Deleted further to HU request.

¹⁰⁰ NL and UK scrutiny reservation.

7. In the cases referred to in paragraphs 2 and 4 of Article 57, the European Data Protection Board shall issue an opinion on the subject- matter submitted to it provided it has not already issued an opinion on the same matter¹⁰¹. This opinion shall be adopted within one month by simple majority of the members of the European Data Protection Board. This period may be extended by a further month, taking into account the complexity of the subject matter. [Regarding the draft decision circulated to the members of the Board in accordance with paragraph 6 of Article 57, a member which has not objected within the period indicated by the Chair, shall be deemed to be in agreement with the draft decision.]
- 7a. Within the period referred to in paragraph 7 the competent supervisory authority shall not adopt its draft decision as per paragraph 2 of Article 57.
- 7b. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 2 and 4 of Article 57 and the Commission of the opinion and make it public.
8. The supervisory authority referred to in paragraph 2 of Article 57 shall take utmost account of the opinion of the European Data Protection Board and shall within two weeks after receiving the opinion, electronically communicate to the chair of the European Data Protection Board whether it maintains or will amend its draft decision and, if any, the amended draft decision, using a standardised format.
9. Where the *concerned* supervisory authority informs the chair of the European Data Protection Board within the period referred to in paragraph 8 that it does not intend to follow the opinion of the Board, in whole or in part, providing the relevant grounds, paragraph 3 of Article 57 shall apply.
10. (...)
11. (...)

¹⁰¹ ES suggested keeping the possibility for one DPA requesting an opinion from the EDPB.

Article 58a

Decisions by the European Data Protection Board¹⁰²

1. In the cases referred to in paragraph 3 of Article 57, the European Data Protection Board shall adopt a decision on the subject-matter submitted to it in order to ensure the correct and consistent application of this Regulation in individual cases. The decision shall be reasoned and addressed to the lead supervisory authority and all the concerned supervisory authorities and binding on them.
2. The decision referred to in paragraph 1 shall be adopted within one month from the referral of the subject-matter by a two-third majority of the members of the Board. This period may be extended by a further month on account of the complexity of the subject-matter.
3. In case the Board has been unable to adopt a decision within the periods referred to in paragraph 2, it shall adopt its decision within two weeks following the expiration of the second month referred to in paragraph 2 by a simple majority of the members of the Board¹⁰³. In case the members of the Board are split, the decision shall be adopted by the vote of its Chair.
4. The concerned supervisory authorities shall not adopt a decision on the subject-matter submitted to the Board under paragraph 1 during the period referred to in paragraph 2.
5. (...)
6. The Chair of the European Data Protection Board shall notify, without undue delay, the decision referred to in paragraph 1 to the concerned supervisory authorities. It shall inform the Commission thereof. The decision shall be published on the website of the European Data Protection Board without delay.

¹⁰² PL scrutiny reservation. IE thought the controller should have standing to intervene in the proceedings before the EDPB.

¹⁰³ HU reservation: it believe that this option renders the 2/3 majority rule meaningless as there will be no effective incentive for the EDPB to adopt a decision that reflects the view of the vast majority of DPAs of the Member States. Furthermore this would also question the general validity of the EDPB's decision, since the fact that the Board could not come to an agreement supported by at least the 2/3 of its members might give rise to serious doubts whether the finding of such decision is commonly shared across the Union.

7. The lead supervisory authority or, as the case may be, the supervisory authority to which the complaint has been lodged shall adopt their final decision on the basis of the decision referred to in paragraph 1¹⁰⁴, without undue delay and at the latest by one month after the European Data Protection Board has notified its decision. The final decision of the concerned supervisory authorities shall be adopted under the terms of Article 54a, paragraph 4a, 4b and 4bb.

Article 59

Opinion by the Commission¹⁰⁵

(...)

Article 60

Suspension of a draft measure¹⁰⁶

(...)

¹⁰⁴ HU scrutiny reservation; FI reservation; FI would prefer a system under which the EDPB decision would be directly applicable and would not have to be transposed by the lead DPA.
¹⁰⁵ COM and FR reservation on deletion.
¹⁰⁶ Deleted at the suggestion of BE, CZ, DE, ES, IT, SE and UK. PT scrutiny reservation. COM and FR reservation on deletion.

Article 61
*Urgency procedure*¹⁰⁷

1. In exceptional circumstances, where a competent¹⁰⁸ supervisory authority considers that there is an urgent need to act in order to protect rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Article 57 or the procedure referred to in Article 54a, immediately adopt provisional measures intended to produce legal effects within the territory of its own Member State¹⁰⁹, with a specified period of validity. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them, to **the concerned supervisory authorities**¹¹⁰, the European Data Protection Board and to the Commission.
2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion or an urgent binding decision from the European Data Protection Board, giving reasons for requesting such opinion or decision.
3. Any supervisory authority may request an urgent opinion or an urgent binding decision, as the case may be, from the European Data Protection Board where **a** competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the rights and freedoms of data subjects, giving reasons for requesting such opinion or decision, including for the urgent need to act.
4. By derogation from paragraph 7 of Article 58 and paragraph 2 of Article 58a, an urgent opinion or an urgent binding decision referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the European Data Protection Board.

¹⁰⁷ DE scrutiny reservation. COM explained that the urgency procedure was an essential part of the consistency mechanism. The existence of an urgency procedure was welcomed by several delegations (DE, ES, IT, NL), but also gave rise to many questions. There was lack of clarity surrounding the criteria which could warrant the taking of provisional measures (DE, FR, PT), in particular by another DPA. The need to respect certain procedural guarantees (e.g. giving notice to the data controller) prior to the taking of provisional measures was emphasised by FR.

¹⁰⁸ Reinstated at the request of COM and FR.

¹⁰⁹ COM scrutiny reservation.

¹¹⁰ Further to LU remark that the lead authority should also be informed.

Article 62

Implementing acts

1. The Commission may adopt implementing acts of general scope for:
 - (a) (...)¹¹¹
 - (b) (...);
 - (c) (...);
 - (d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 57(5) and (6) and in Article 58(8).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

2. (...)

3. (...)

Article 63

Implementation of measures adopted by way of the consistency mechanism

(...)

¹¹¹ COM reservation on deletion.

SECTION 3

EUROPEAN DATA PROTECTION BOARD

Article 64

European Data Protection Board

- 1a. The European Data Protection Board is hereby established as body of the Union and shall have legal personality.
- 1b. The European Data Protection Board shall be represented by its Chair.
2. The European Data Protection Board shall be composed of the head¹¹² of one supervisory authority of each Member State or his/her representative and of the European Data Protection Supervisor¹¹³.
3. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, (...) a joint representative **shall be appointed in accordance with the national law of that Member State**¹¹⁴.
4. The Commission shall have the right to participate in the activities and meetings of the European Data Protection Board and shall designate a representative without voting rights. The chair of the European Data Protection Board shall, communicate the Commission the activities of the European Data Protection Board.

¹¹² BE, supported by CZ, CY, SE and SI, suggested adding "*or his/her representative*". IT suggested referring to Art. 68(2).

¹¹³ NO pleaded in favour of the participation of the associated States. COM replied that the modalities for such participation were provided for in the association agreement.

¹¹⁴ DE proposal.

Article 65

Independence

1. The European Data Protection Board shall act independently when performing its tasks or exercising its powers pursuant to Articles 66 (...) and 67.¹¹⁵
2. Without prejudice to requests by the Commission referred to in point (b) of paragraph 1 and in paragraph 2 of Article 66, the European Data Protection Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from anybody¹¹⁶.

Article 66

Tasks of the European Data Protection Board

1. The European Data Protection Board shall promote the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or at the request of the Commission, in particular:
 - (aa) monitor and ensure the correct application of this Regulation in the cases provided for in Article 57(3) without prejudice to the tasks of national supervisory authorities;
 - (a) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;
 - (b) examine, on its own initiative or on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation;

¹¹⁵ UK and SI scrutiny reservation.

¹¹⁶ DE scrutiny reservation.

- (ba) draw up guidelines for supervisory authorities concerning the application of measures referred to in paragraph 1, 1b and 1c of Article 53 and the fixing of administrative fines pursuant to Articles 79 and 79a¹¹⁷;
- (c) review the practical application of the guidelines, recommendations and best practices referred to in points (b) and (ba);
- (ca) encourage the drawing-up of codes of conduct and the establishment of data protection certification mechanisms and data protection seals and marks pursuant to Articles 38 and 39;
- (cb) carry out the accreditation of certification bodies and its periodic review pursuant to Article 39a and maintain a public register of accredited bodies pursuant to paragraph 6 of Article 39a and of the accredited controllers or processors established in third countries pursuant to paragraph 4 of Article 39¹¹⁸;
- (cd) specify the requirements mentioned in paragraph 3 of Article 39a with a view to the accreditation of certification bodies under Article 39;
- (ce) give the Commission an opinion on the level of protection in third countries or international organisations, in particular in the cases referred to in Article 41;
- (d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in paragraph 2 and on matters submitted pursuant to paragraph 4 of Article 57;
- (e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities;
- (f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

¹¹⁷ DK constitutional reservation on the introduction of administrative fines, irrespective of the level of the fines.

¹¹⁸ HU said that paragraphs (caa) and (cab) were contrary to the text of the general approach reached in June 2014 (11028/14); it is for the national supervisory authority to do this.

- (g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide;
 - (h) (...);
 - (i) maintain a publicly accessible electronic register of decisions taken by supervisory authorities and courts on issues dealt with in the consistency mechanism.
2. Where the Commission requests advice from the European Data Protection Board, it may indicate a time limit, taking into account the urgency of the matter.
 3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 87 and make them public.

Article 67

Reports

1. (...)
2. The European Data Protection Board shall draw up an annual report regarding the protection of natural persons with regard to the processing of personal data in the Union and, where relevant, in third countries and international organisations. The report shall be made public and be transmitted to the European Parliament, the Council and the Commission.
3. 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

Procedure

1. The European Data Protection Board shall adopt binding decisions referred to in paragraph 3 of Article 57 by a two-third majority of its members. As regards decisions related to the other tasks listed in Article 66 hereof, they shall be taken by a simple majority of its members.
2. The European Data Protection Board shall adopt its own rules of procedure by a two-third majority of its members and organise its own operational arrangements.

Article 69

Chair

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members (...).¹¹⁹
2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable once.¹²⁰

Article 70

Tasks of the chair

1. The chair shall have the following tasks¹²¹:
 - (a) to convene the meetings of the European Data Protection Board and prepare its agenda;

¹¹⁹ COM reservation on deletion.

¹²⁰ NL thought that also the case where a chair or a deputy chairperson ceases to be a member of the European Data Protection Board[/Committee], should be addressed by the Regulation. However, this may be left to national law of the Member state concerned. COM and SK scrutiny reservation.

¹²¹ BE suggesting adding another task, namely the chair's role towards the exterior.

- (aa) to notify decisions adopted by the European Data Protection Board pursuant to Article 58a to the lead supervisory authority and the *concerned* supervisory authorities;
 - (b) to ensure the timely performance of the tasks of the European Data Protection Board, in particular in relation to the consistency mechanism referred to in Article 57.
2. The European Data Protection Board shall lay down the attribution of tasks between the chair and the deputy chairpersons in its rules of procedure.

Article 71

Secretariat

1. The European Data Protection Board shall have a secretariat. The European Data Protection Supervisor shall provide that secretariat¹²².
2. The secretariat shall provide analytical, administrative and logistical support to the European Data Protection Board.
3. The secretariat shall be responsible in particular for:
 - (a) the day-to-day business of the European Data Protection Board;
 - (b) the communication between the members of the European Data Protection Board, its chair, and the Commission and for communication with other institutions and the public;
 - (c) the use of electronic means for the internal and external communication;
 - (d) the translation of relevant information;
 - (e) the preparation and follow-up of the meetings of the European Data Protection Board;

¹²² CZ, DE, EE, FR, ES, HU, AT, IE, RO, PT, SI, SK and UK reservation on entrusting the EDPS with the EDPB secretariat. The risk of conflicts of interest of EDPS staff was raised in this regard. NL scrutiny reservation.

- (f) the preparation, drafting and publication of opinions, decisions¹²³ on the settlement of disputes between supervisory authorities and other texts adopted by the European Data Protection Board.

Article 72

Confidentiality¹²⁴

1. The discussions¹²⁵ of the European Data Protection Board shall be confidential.
 2. Access to documents submitted to members of the European Data Protection Board, experts and representatives of third parties shall be governed by Regulation (EC) No 1049/2001.
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¹²³ Further to FR suggestion.

¹²⁴ DE, EE, ES, RO, PL, PT, SE and UK reservation: it was thought that the EDPB should operate in a manner as transparent as possible and a general confidentiality duty was obviously not conducive to this. This article should be revisited once there is more clarity on the exact role and powers of the board, including the question whether the EDPS shall ensure the Secretariat.

¹²⁵ IT scrutiny reservation: it suggested replacing this term with 'minutes' or 'summary records', thereby distinguishing between confidentiality of decision-making and access to documents.

Option 1

113) Without prejudice to the right of natural or legal person to bring an action for annulment of decisions of the European Data Protection Board which have been notified to him or her before the Court of Justice of the European Union, each natural or legal person should have the right to an effective judicial remedy against a decision of a supervisory authority which produces legal effects concerning this person. Such decisions concern in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, this right does not encompass other measures of supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. The fact that a natural or legal person has not brought an action for the annulment of the European Data Protection Board's decisions before the Court of Justice of the European Union within the mandatory time-limit, does not bar that person from calling in question the lawfulness of that decision before the national courts at a later stage in particular in the context of judicial review of a supervisory authority's decision applying the European Data Protection Board's decision. In that context, where a national court considers that the European Data Protection Board's decision may be unlawful, it shall request the Court of Justice of the European Union a preliminary ruling concerning the validity of that European Data Protection Board's decision, in accordance with Article 267 TFEU as interpreted by the Court of Justice in the *Foto-frost* case¹²⁶. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established and shall be conducted in accordance with the national procedural law of that Member State. Those courts should exercise full jurisdiction which should include jurisdiction to examine all questions of fact and law relevant to the dispute before it. Where a complaint has been rejected or dismissed by a supervisory authority, the complainant may bring proceedings to the courts in the same Member State. In the context of judicial remedies relating to the application of this Regulation, national courts whose decisions may be subject to appeal under national law should endeavour to request a preliminary ruling concerning the interpretation of Union law including this Regulation, in particular where the case involves a data subject who has lodged a complaint with a supervisory authority located in a Member State other than the one where the controller or processor has its establishment.

¹²⁶ Case C-314/85.

CHAPTER VIII

REMEDIES, LIABILITY AND SANCTIONS

Article 76b

Actions before the Court of Justice of the European Union against decisions by the European Data Protection Board

1. Actions may be brought before the Court of Justice of the European Union in accordance with Article 263 TFEU, in order for it to review the legality of decisions taken by the European Data Protection Board pursuant to Article 58a. Such actions may be brought before the Court of Justice of the European Union by supervisory authorities, Member States and the Union institutions as well as by natural or legal persons to whom decisions taken by the European Data Protection Board have been notified or to whom such decisions are of direct and individual concern, including data subjects who have lodged a complaint in accordance with Article 73.
2. The expiration of the time-period provided for in the sixth subparagraph of Article 263 TFEU and the Rules of Procedure of the General Court shall not bar the persons referred to in paragraph 1 from calling in question the lawfulness of any decision taken by the European Data Protection Board before the national courts in accordance with Article 74 or 75 and those national courts from requesting the Court of Justice of the European Union a preliminary ruling concerning the validity of any decision taken by the European Data Protection Board in accordance with Article 267 TFEU.

3. Where the European Data Protection Board notifies its decision in accordance with Article 58a(6), such a notification shall state the possibility for the persons referred to in paragraph 1 to bring an action for annulment before the General Court of the European Union in accordance with Article 263 TFEU as well as the time-period for such an action in accordance with the sixth subparagraph of Article 263 TFEU and the Rules of Procedure of the General Court. It shall also refer to the additional right conferred on that person pursuant to paragraph 2.
4. In the event that the European Data Protection Board has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.
5. The European Data Protection Board shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

Option 2:

Under option 2 recital 113 would be drafted as set out hereafter. There would be no Article 76b, but the bracketed bold text in paragraphs 6 and 7 of Article 58a would be added:

113) **Any natural or legal person has the right to bring an action for annulment of decisions of the European Data Protection Board before the Court of Justice of the European Union (the "Court of Justice") under the conditions provided for in Article 263 TFEU. The concerned supervisory authorities who are the addressees of the decisions of the European Data Protection Board may bring an action for annulment against those decisions within two months of their notification to them, in accordance with Article 263 TFEU. The controller and the complainant who are not the addressees of the decisions of the European Data Protection Board may bring an action for annulment against those decisions only if the latter are of direct and individual concern to them and they should do so within two months of the publication of those decisions on the website of the European Data Protection Board, in accordance with Article 263 TFEU. Without prejudice to this right under Article 263 TFEU, each natural or legal person should have the right to an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning this person. Such decisions concern in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, this right does not encompass other measures of supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established and shall be conducted in accordance with the national procedural law of that Member State. Those courts should exercise full jurisdiction which should include jurisdiction to examine all questions of fact and law relevant to the dispute before it. Where a complaint has been rejected or dismissed by a supervisory authority, the complainant may bring proceedings to the courts in the same Member State. In the context of judicial remedies relating to the application of this Regulation, national courts whose decisions may be subject to appeal under national law should endeavour to request a preliminary ruling concerning the interpretation of Union law including this Regulation, in particular where the case involves a data subject who has lodged a complaint with a supervisory authority located in a Member State other than the one where the controller or processor has its establishment.**

Furthermore, if a decision of the supervisory authority implements a European Data Protection Board's decision and is subject to judicial review before a national court, that national court may consider that the grounds put forward before it by the parties in support of the invalidity of the European Data Protection Board's decision are unfounded and may thus reject them, concluding that the European Data Protection Board's decision is completely valid. On the other hand, a national court does not have the power to declare the European Data Protection Board's decision invalid since that power should be reserved to the Court of Justice. In that case, the national court has to request the Court of Justice a preliminary ruling concerning the validity of that European Data Protection Board's decision, in accordance with Article 267 TFEU as interpreted by the Court of Justice in the Foto-frost case¹²⁷. Finally, in line with the case law of the Court of Justice¹²⁸, a national court may not do so and will be bound by the European Data Protection Board's decision if a natural or legal person was directly and individually concerned by the European Data Protection Board's decision and being the addressee of the supervisory authority's decision implementing the European Data Protection Board's decision, did not bring an action for annulment against the European Data Protection Board's decision or did not so within two months of its publication.

Article 58a

Decisions by the European Data Protection Board

1. In the cases referred to in paragraph 3 of Article 57, the European Data Protection Board shall adopt a decision on the subject-matter submitted to it in order to ensure the correct and consistent application of this Regulation in individual cases. The decision shall be reasoned and addressed to the lead supervisory authority and all the concerned supervisory authorities and binding on them.
2. The decision referred to in paragraph 1 shall be adopted within one month from the referral of the subject-matter by a two-third majority of the members of the Board. This period may be extended by a further month on account of the complexity of the subject-matter.

¹²⁷ Case C-314/85.

¹²⁸ Case C-188/92.

3. In case the Board has been unable to adopt a decision within the periods referred to in paragraph 2, it shall adopt its decision within two weeks following the expiration of the second month referred to in paragraph 2 by a simple majority of the members of the Board. In case the members of the Board are split, the decision shall be adopted by the vote of its Chair.
4. The concerned supervisory authorities shall not adopt a decision on the subject-matter submitted to the Board under paragraph 1 during the period referred to in paragraph 2.
5. (...)
6. The Chair of the European Data Protection Board shall notify, without undue delay, the decision referred to in paragraph 1 to the concerned supervisory authorities. It shall inform the Commission thereof. The decision shall be published on the website of the European Data Protection Board without delay **[after the supervisory authority has notified the final decision referred to in paragraph 7.]**
7. The lead supervisory authority or, as the case may be, the supervisory authority to which the complaint has been lodged shall adopt their final decision on the basis of the decision referred to in paragraph 1¹²⁹, without undue delay and at the latest by one month after the European Data Protection Board has notified its decision. **[The lead supervisory authority or, as the case may be, the supervisory authority to which the complaint has been lodged, shall inform the European Data Protection Board of the date when its final decision is notified respectively to the controller and the data subject.]** The final decision of the *concerned* supervisory authorities shall be adopted under the terms of Article 54a, paragraph 4a, 4b and 4bb. **[The final decision shall refer to the decision referred to in paragraph 1 and shall specify that the decision referred to in paragraph 1 will be published on the website of the European Data Protection Board in accordance with paragraph 6. The final decision shall attach the decision referred to in paragraph 1.]**

¹²⁹ FI reservation; would prefer a system under which the EDPB decision would be directly applicable and would not have to be transposed by the lead DPA.