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from: German delegation
to: Working Group on Information Exchange and Data Protection (DAPIX)

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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)
- One-stop-shop mechanism

Germany would like to thank the Greek and Lithuanian Presidencies and the Secretariat for their hard work on the one-stop-shop principle. The one-stop shop may be an important aid to apply and interpret the General Data Protection Regulation uniformly across the EU and is a key element of the reform.

Discussions of the working party in October and November 2013 and negotiations in the Committee of Permanent Representatives on 27 November 2013 have found that the one-stop-shop model cannot be implemented in pure form. Member States argued that the proposal (division of competences with numerous coordination mechanisms between a one-stop shop authority at the main establishment and authorities in the country of data processing) posed legal problems (exercise of sovereignty in other Member States), was costly, lengthy, remote from citizens and inefficient. At the JHA Council on 7-8 October 2013 the ministers favoured a one-stop-shop solution that is both binding for businesses and close to citizens. In addition, the JHA Council called for examining whether enhancing the European Data Protection Board (EDPB) would be an alternative, while indicating that the large majority of Member States has reservations about giving the EDPB the status of a European agency with binding decision-making powers.

Some Member States at the JHA Council on 6 December 2013 and the Council Legal Service in its report of 19 December 2013 concluded that the proposed principle of a single point of contact is not compatible with effective legal protection of the fundamental rights of the data subject. Although data subjects may file a complaint against a data processor with a supervising authority of their choice, local authorities must submit the complaint to the lead authority for decision. At the end of the procedure, citizens receive a copy of the lead authority's decision. They would have to appeal this decision in a foreign language and under foreign rules of procedure in the lead authority's Member State.

On the basis of the proposals of the JHA Council and the report of the Council Legal Service Germany developed a proposal for a different approach to realize the one-stop shop for enterprises in the Union and a powerful administrative control mechanism to strengthen the rights of individuals. The aim is to create an efficient and clear one-stop shop procedure giving all stakeholders the necessary legal certainty and possibilities of legal redress. The proposal is intended to develop and simplify previous provisions and to boost consultations on this issue. It combines the desire to strengthen national supervisory authorities within their constitutional boundaries and to ensure an efficient procedure.

The proposal contains two complementary approaches: EU-wide decisions on the compliance of data processing to safeguard the interests of businesses and decisions on the non-compliance of data processing to safeguard the interests of citizens and supervisory authorities. The proposal aims at ensuring both legal certainty for businesses and proximity. One of the essential provisions of the proposal is Article 51 (1) stipulating that local supervisory authorities should monitor data processing of businesses that are not established in the Member State concerned but offer goods or services to data subjects in that Member State.

Both approaches are subject to the consistency mechanism and the cooperation procedure. The consistency mechanism in which all national supervisory authorities participate through the EDPB is the first stage. The second stage is the cooperation procedure in the EDPB. The cooperation procedure is concluded by a binding EDPB decision for the union-wide compliance procedure and a non-binding EDPB opinion for the union-wide non-compliance procedure, which has to be taken into account by all stakeholders. Since both procedures should be carried out swiftly, authorities involved will have only a short time to comment.

- **EU-wide compliance procedure:** The first approach aims at establishing an EU-wide compliance procedure (Art. 56). The compliance procedure described in Art. 34a is a non-compulsory procedure which gives businesses the opportunity to request a review of specific or planned data processing activities in their own interest. The application should include information on the applicant, the specific or planned data processing activities, on the pre-processing concept and on precautions to protect data subjects. The application must be filed with the lead supervising authority which is solely responsible for all issues related to a positive EU-wide compliance decision. Lead authorities are the authorities in those Member States where the business has its main establishment or representatives in the EU. The main establishment should be determined on the basis of clear formal criteria, e.g. the registered office. The lead authority must consult national supervisory authorities through the EDPB. If the lead authority wants to approve the application of the businesses based on a complete request pursuant to Art. 34a, it must draft a compliance decision within two months. The draft is distributed to the supervisory authorities involved via the EDPB. If they do not object to the lead authority's draft within six weeks they are bound by that decision. If one Member State objects to the draft decision of the lead authority, any national supervisory authority, the European Commission or the EDPB may launch the cooperation procedure pursuant to Art. 58. The cooperation procedure is concluded by a binding decision of the EDPB. The EDPB shall have legal personality as described in Article 64. The decision finding process within the EDPB is a voting procedure of the Member States' data protection supervisory authorities. If less than 1/3 of the Member States objected to the draft, the majority decision should be binding for all Member States. If more than 1/3 of the Member States objected to the draft, the EDPB may prepare a new draft which reflects the concerns of the Member States. If the EDPB draft is rejected as well, EDPB communicates the results of the cooperation procedure to the business. Regardless of the competences of the supervisory authorities for the application of this Regulation on the territory of its own Member State, the EDPB may decide whether to seek solutions for the consistent application of this Regulation by issuing general guidelines or other non-binding recommendations on the questions raised by the compliance procedure.

- **Possibilities of legal redress:** Even though the compliance decision is made in a procedure governed by the Regulation, the decision adopted during the compliance procedure remains a national legal act. On the other side the decision adopted by the EDPB is a decision by a European institution.
 - **(1) Businesses:**
 - Businesses have the right to a judicial remedy when the lead supervisory authority rejects their application for a compliance decision. Proceedings are brought before the courts of the Member State where the lead supervisory authority is established. These national courts are as well competent for legal redress of businesses when the compliance procedure is concluded by a decision of the lead authority, which does not reject their application but comprehends constrictions or modifications and to which supervisory authorities did not object.
 - If the compliance procedure requires a cooperation procedure and is concluded by a binding decision of the EDPB, businesses have the right to judicial remedy brought before the General Court pursuant to Article 263 (4), Article 256 (1) TEU.
 - **(2) Citizens:**
 - All data subjects have the right to consult the supervising authority in their Member State if they think that the processing of their personal data does not comply with the Regulation. If the national authority refers to the binding compliance decision and refuses to take measures, the data subject may bring an action to compel the supervising authority to intervene. The national court will examine if the local supervisory authority is bound by the decision of the lead authority. The decision of the lead authority is only binding if it is legal. In this case, the defendant is the legal entity of the national supervising authority and not the lead authority. The national court will take care, that the lead authority is able to give its opinion on the court procedure.
 - All data subjects have the right to judicial remedy brought before the General Court pursuant to Article 263 (4) TEU.
- (3). Member States:** Member States, whose supervisory authorities objected to the EDPB's decision, have the right to judicial remedy brought before the Court of Justice pursuant to Article 263 (2) TEU.

- **Non-compliance procedure:** Any data protection supervisory authority should be allowed to initiate a procedure to establish non-compliance of data processing (Art. 57), particularly on the request of a citizen. The supervisory authority notifies a business of its intention to initiate a procedure and makes appropriate recommendations. If the business does not comply with the recommendations within one month, the supervisory authority will initiate the EU-wide non-compliance procedure. In this case, the business may apply for a EU-wide compliance procedure. Initiating a compliance procedure suspends the non-compliance procedure. The authority may take measures despite a pending procedure only under exceptional circumstances if it sees an urgent need for action to protect the rights and freedoms of data subjects.

All national supervisory authorities should be consulted in the EDPB also during the non-compliance procedure. Individual national supervisory authorities should be bound by the lead authority's decision only if they expressly consent, because corrective measures on national level are sufficient to redress a complaint of a data subject in this Member State. If the procedure does not lead to an EU-wide non-compliance decision, the European Commission, a national supervisory authority or the EDPB may initiate the cooperation procedure pursuant to Art. 58. The cooperation procedure is concluded by a non-binding EDPB opinion to be taken into account by all stakeholders.

- **Possibilities of legal redress:** Even though the non-compliance decision is made in a procedure governed by the Regulation, it remains a national legal act.
 - (1) **Businesses:** Businesses have the right to judicial remedy against a non-compliance decision by the supervisory authority that initiated the procedure. Proceedings are brought before the courts of the Member State where the supervisory authority initiating the non-compliance- procedure is established.
 - (2) **Citizens:**
 - Data subjects whose complaints are not or not completely redressed by a non-compliance decision have the right to judicial remedy which is brought before the courts of the Member State of the supervisory authority where the complaint was lodged.

- A data subject shall have the right to an effective judicial remedy against a controller or a processor. The data subject shall have the choice to bring such proceedings before the courts of the Member State where the controller or processor has an establishment or before the courts of the Member State where the data subject has his or her habitual residence.

The two different approaches are needed to reach the aim of establishing both a one-stop shop providing legal certainty for businesses in cases where it is needed and proximity with powerful local supervisory authorities. The aims that are most important for businesses, i.e. ensuring fair competition and legal certainty, can be achieved with an EU-wide binding compliance decision. However legal certainty and a consistent application of European data protection provisions are also of great importance for consumers.

CHAPTER IV

SECTION 3

DATA PROTECTION IMPACT ASSESSMENT, PRIOR AUTHORISATION
AND DECISION ON COMPLIANCE

Article 34

Prior (...) consultation

[No changes to the text in Doc. 17831/13]

Article 34a

Decision on Compliance

- 1. Controllers, processors, joint controllers or group of undertakings which have their main establishment in the Union or have designated an representative pursuant to Art. 25 (applicants) may on request obtain a Union-wide compliance decision in trans-border cases from the competent supervisory authority, in order to ensure the compliance of data processing with this Regulation.*
- 2. In order to obtain a compliance decision the applicant shall make a request to the supervisory authority. In the request the applicant must describe and explain*
 - (a) the controller, processor, joint controllers or group of undertakings to which the decision shall apply,*
 - (b) the category of data processing practised or planned,*
 - (c) the concrete concept that the data processing is based on and that is to be examined in the compliance procedure,*
 - (d) the legal basis of the data processing pursuant to Article 6 and the measures to protect the data subject pursuant to this Regulation.*
 - (e) the data protection impact assessment as provided for in Article 33 indicating that the processing is likely to present a high degree of specific risks,*

(f) a reasonable interest

aa) in a compliance decision, for example in the case of the introduction of new data processing or a processing for which no established practice or, clear opinion of the supervisory authority exists and

bb) in a Union-wide decision, notably the importance of the data processing for a substantial number of data subjects concerned in more than one Member State or the existence of establishments in more than one Member State.

CHAPTER VI

SECTION 2

COMPETENCE, DUTIES AND POWERS

Article 51

Competence

1. Each supervisory authority shall be competent to monitor the application of this Regulation and exercise the powers conferred on it in accordance with this Regulation regarding each of the following:
 - a) processing in the context of the activities of an establishment of the controller or processor on the territory of its own Member State;
 - b) processing which is related to the offering of goods and services to data subjects on its own Member State by controllers not established in its own Member State; or
 - c) processing referred to in paragraph 2 of Article 3 which is related to data subjects on its territory by a controller established outside of the European Union.
- 1a. The only supervisory authority competent to perform the duties and exercise the powers conferred on it in accordance with this Regulation regarding a Member State's public authorities and bodies shall be the supervisory authority established in that Member State.

2. Each supervisory authority may become lead authority of a Union-wide procedure to approve or disapprove the lawfulness of a data processing:

(a) The competent lead authority of a compliance procedure pursuant to Article 56 shall be the supervisory authority of the Member State in which the controller or the processor filing the request (the applicant) has its main establishment according to its articles of association or, if it does not have a main establishment within the Union, its representative pursuant to Article 25.

(b) The competent lead authority of a non-compliance procedure pursuant to Article 57 shall be the supervisory authority that considers such procedure necessary or where a data subject has lodged a complaint.

Article 52

Duties

1. Without prejudice to other duties set out under this Regulation, each supervisory authority shall on its territory:
 - (a) monitor and enforce the application of this Regulation;
 - (aa) promote public awareness 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) inform the national parliament, the government or other political institution as well as the public on any issue related to the protection of personal data;
 - (ac) promote the awareness of controllers and processors of their obligations under this Regulation;
 - (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 complaints lodged by a data subject, or body, organisation or association representing a data subject in accordance with Article 56a and 57a, 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) share information with 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 either on its own initiative or 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;
- (j) contribute to the activities of the European Data Protection Board;
- (k) issue opinions as well as fulfil any other duties related to the protection of personal data;
- (l) make a decision on the compliance or non-compliance of data processing activities or planned data processing activities with this Regulation pursuant to Article 56 and Article 57.**

4. Each supervisory authority shall enable the submission of complaints referred to in point (b) of paragraph 1, by measures which can be completed electronically, such as providing a complaint submission form, without excluding other means of communication.
5. The performance of the duties of each supervisory authority shall be free of charge for the data subject and for the data protection officer.
6. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may refuse to act on the request. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

Article 52a

Cooperation and mutual assistance between supervisory authorities

1. The supervisory authorities of the Member States shall provide each other with all useful information, analysis and mutual assistance on questions of fact or law in order to implement this Regulation in a consistent manner.
2. The lead authority shall, without undue delay, provide the other competent supervisory authorities with all relevant information and analyses obtained while performing its duties. Any competent supervisory authority may also request relevant information and analyses from the lead authority.
3. The European Data Protection Board shall be used to facilitate the cooperation and the exchange of information. Therefore the European Data Protection Board could establish a situation centre with liaison officers from the supervisory authorities of the Member States.
4. For the purposes of applying the provisions of this article, the supervisory authorities and the European Data Protection Board shall supply the information requested by other supervisory authorities by electronic means and within the shortest possible period of time, using a standardised format.

Article 53

Powers

1. Each Member State shall provide by law that its supervisory authority shall have at least the following monitoring powers:
 - (a) to order the controller and the processor, and, where applicable, the representative to provide any information it requires for the performance of its duties;
 - (b) to carry out data protection audits;
 - (c) to order the controller or the processor to comply with the data subject's requests to exercise his or her rights provided by this Regulation;
 - (d) to notify the controller or the processor of an alleged infringement of this Regulation, and where appropriate, order the controller or the processor to remedy that infringement;

- 1a. Each Member State shall provide by law that its supervisory authority shall have at least the following investigatory powers:
- (a) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its duties;
 - (b) to obtain access to any premises of the controller and the processor , including to any data processing equipment and means.
- 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 reprimands to a controller or processor where processing operations have infringed provisions of this Regulation;
 - (c) (...);
 - (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; inter alia by carrying out a data protection audit or by ordering the rectification, restriction or erasure of data pursuant to Articles 16, 17a and 17 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;
 - (f) to order the suspension of data flows to a recipient in a third country or to an international organisation;
 - (g) to impose an administrative fine pursuant to Articles 79 and 79a, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case.

- 1c. Each Member State shall provide by law that its supervisory authority shall have the following authorisation powers:
 - (a) give advice in accordance with the prior consultation procedure referred to in Article 34,
 - (b) make a decision on compliance pursuant to Article 34a ;**
 - (c) authorise standard data protection clauses referred to in point (c) of Article 42(2);
 - (d) authorise contractual clauses referred to in point (d) of Article 42(2);
 - (e) approve binding corporate rules pursuant to Article 43.
2. The procedure for exercising the powers referred to in paragraphs (1), (1a), (1b) and (1c) shall be laid down in Member State law. The exercise of those powers shall be subject to appropriate procedural safeguards, including effective judicial remedy and due process, set out in Union and Member State law.
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 or to commence or engage otherwise in legal proceedings, in order to enforce the provisions of this Regulation.

Article 54

Activity report

Each supervisory authority shall draw up an annual report on its activities. The report shall be transmitted to the government and the national parliament and shall be made available to the public, the Commission and the European Data Protection Board.

Article 55

Mutual assistance

Article 56

Joint operations of supervisory authorities

[Both Articles are not subject of the current proposal and remain as in the text in Doc. 17831/13]

CHAPTER VII
CONSISTENCY
SECTION 1
CONSISTENCY MECHANISMS

Article 55

Consistency mechanisms

- 1. For the purpose set out in Article 46 (1a), the supervisory authorities shall co-operate with each other through the consistency mechanisms as set out in this section. Consistency mechanisms are**
- (a) the Union-wide compliance procedure (Article 56),**
 - (b) the Union-wide non-compliance procedure (Article 57),**
 - (c) the co-operation procedure (Article 58).**

Article 56

Union-wide Compliance Procedure

- 1. Controllers or processors which have their main establishment in the Union or have designated an representative pursuant to Art. 25 may use the Union-wide compliance procedure to obtain a Union-wide legally binding decision as to whether their data processing complies with this Regulation in the following cases:**
- (a) decisions on compliance pursuant to Article 34a,**
 - (b) draft codes of conduct or amendments or extensions to a code of conduct pursuant to Article 38(2),**
 - (c) standard data protection clauses pursuant to point (c) of Article 42(2),**
 - (d) contractual clauses between the controller or processor and the recipient of the data pursuant to point (d) of Article 42(2),**
 - (e) binding corporate rules pursuant to Article 43**
- 2. The Union-wide compliance procedure shall be initiated at the request of a controller, processor, joint controller or group of undertakings (applicant) or any national supervisory authority.**
- 3. The request shall be filed with the lead authority as referred to in Article 51 (2) a.**

4. The lead authority shall forward without delay any request in due form to the European Data Protection Board. The European Data Protection Board shall forward the request to the supervisory authorities of the other Member States.
5. The lead authority shall make a decision on the request within two months of receiving it in due form:
- (a) If the lead authority considers that the data processing of the applicant complies with applicable data protection law, it shall draft a compliance decision.
- (b) If the lead authority considers that the data processing of the applicant does not comply with the applicable data protection law, it shall reject the request for a compliance decision. This rejection is legally binding in the territory of the Member State of the lead authority. The lead authority shall decide after due consideration whether to initiate a non-compliance procedure pursuant to Article 57.
6. If the lead authority drafts a compliance decision pursuant to paragraph 6a it shall forward it without delay in a standardised way to the European Data Protection Board. The European Data Protection Board shall forward the draft compliance decision in a standardised way. The supervisory authorities shall submit comments and/or an objection in accordance with paragraph 7 within six weeks.
7. The participating supervisory authorities of the other Member States may comment on the draft compliance decision by the lead authority and/or object to it. Failure by a supervisory authority to respond within the six weeks' time limit set by the European Data Protection Board shall be deemed as a vote in favour of the draft (tacit agreement). The subsequent compliance decision by the lead authority shall be binding if all supervisory authorities of the Member States did not object. Objections shall set out the grounds for the decision to object. If one supervisory authority objects to the draft decision of the lead authority, any national supervisory authority, the European Commission or the European Data Protection Board may launch the cooperation procedure pursuant to Art. 58.

Article 56a

Judicial redress and remedies in the Union-wide compliance procedure

1. The applicant of a Union-wide compliance procedure shall have the right to judicial remedies against the rejection by the lead authority pursuant to Article 56 (5) (b). Proceedings shall be brought before the courts of the Member State where the lead authority is established. The applicant shall have the right to judicial remedy against the decision of the European Data Protection Board brought before the General Court pursuant to Article 263 (4), Article 256 (1) TEU.¹
2. Each data subject shall have the right to judicial remedy brought before the court of the Member State in which he /she is resident against its supervisory authority in case the supervisory authority refuses to take a measure due to a binding compliance decision. If the compliance decision was found in violation with the rules of this Regulation it shall not be binding for the supervisory authority of the Member State where the data subject has his/her residence. Each data subject shall have the right to judicial remedy against the decision of the European Data Protection Board brought before the General Court pursuant to Article 263 (4), Article 256 (1) TEU.
3. Member States, whose supervisory authorities objected to the decision of the European Data Protection Board have the right to judicial remedy brought before the Court of Justice pursuant to Article 263 (2) TEU.²
4. The applicant has the right to judicial redress against judgements which suspend the obligation to comply with a compliance decision.

¹ This provision can be introduced as new Article after the provisions for the co-operation procedure at the EDPB.

² This provision can be introduced as new Article after the provisions for the co-operation procedure at the EDPB.

Article 57

Union-wide Non-compliance Procedure

1. Each supervisory authority may initiate the Union-wide non-compliance procedure to obtain a legally binding decision by the supervisory authorities of all Member States if in its opinion a certain data processing activity does not comply with this Regulation. Each supervisory authority shall initiate the Union-wide non-compliance procedure to obtain a legally binding decision if the said processing activities are related to the offering of goods or services to data subjects in several Member States and may substantially affect the free movement of personal data within the Union or the right of individuals to protection with regard to the processing of personal data.;
2. To initiate Union-wide non-compliance procedure, the supervisory authority of a Member State shall issue a non-compliance decision. Such a decision may be
 - (a) the result of an examination based on a data subject's complaint pursuant to Article 73 (5),
 - (b) the result of an ex-officio examination by that supervisory authority, or
 - (c) the negative result of a Union-wide compliance procedure conducted by the lead authority pursuant to Article 56 (2) at the request of a processor or controller according to Article 34 a (rejection pursuant to Article 56 (7) (b).
3. The competent supervisory authority shall forward the non-compliance decision to the European Data Protection Board and shall request the Board to ask the supervisory authorities of the other Member States to agree. The authority initiating the procedure shall thereby become the requesting supervisory authority.
4. In its request to conduct a Union-wide non-compliance procedure, the requesting supervisory authority must describe and explain
 - (a) the category of data processing in question,
 - (b) the reasons for the opinion that the data processing in question violates the law,
 - (c) the objective interest in a Union-wide decision, notably the importance of the data processing for a substantial number of data subjects concerned in more than one Member State or the existence of establishments in more than one Member State.

5. The requesting supervisory authority has to inform the controller or processor about the intention to initiate a Union-wide non-compliance procedure one month before the procedure starts. The information shall contain recommendations how to ensure the protection of personal data and to demonstrate compliance with this Regulation. The right of the controller to initiate a Union-wide compliance procedure with the lead authority pursuant to Article 56 remains unaffected. If a Union-wide compliance procedure is initiated the non-compliance procedure is suspended. In exceptional circumstances, where there is an urgent need to act in order to protect rights and freedoms of data subjects, the supervisory authority may immediately adopt provisional measures in accordance with Article 53 for the territory of its own member state, as long as the compliance procedure is going on.
6. The European Data Protection Board shall forward the authority's request to conduct a Union-wide non-compliance procedure to the other Member States' supervisory authorities without delay. The supervisory authorities shall decide within six weeks whether they agree with the requesting authority.
7. If a participating supervisory authority agrees within the time limit pursuant to paragraph 6, the non-compliance decision by the lead authority shall be binding in the territory of that supervisory authority (explicit agreement).
8. The European Data Protection Board shall identify the result of the Union-wide non-compliance procedure after the deadline for submitting an agreement has passed. The Board shall inform the requesting supervisory authority, the supervisory authorities and the European Commission of the result of the Union-wide non-compliance procedure. The Board shall forward to the controller or processor in question all of the participating supervisory authorities' agreements and comments. The requesting supervisory authority shall inform the controller or processor of the result of the Union-wide non-compliance procedure.
9. In order to bring about a uniform, Union-wide opinion, the requesting supervisory authority, the European Commission or the European Data Protection Board may within one month initiate the co-operation procedure pursuant to Article 58.

Article 57a

Judicial redress in the Union-wide non-compliance procedure

The controller or processor shall have the right to judicial remedies against non compliance decision pursuant to Article 57 (2). Proceedings shall be brought before the courts of the Member State where the requesting supervisory authority, which has initiated the non-compliance procedure, is established. The controller's or processor's possibility to seek legal redress shall remain unaffected by the launch of the co-operation procedure pursuant to Article 58.

Article 58

Co-operation Procedure

1. Each supervisory authority, the European Commission and the European Data Protection Board may initiate the co-operation procedure in the following cases:
 - (a) if the Union-wide compliance procedure (Article 56) did not lead to a Union-wide binding decision,
 - (b) if the Union-wide non-compliance procedure (Article 57) did not lead to a Union-wide binding decision,
 - (c) on adopting a list of the processing operations that are subject to the requirement for a data protection impact assessment pursuant to Article 33(2b)¹,
 - (d) on approving the criteria for accreditation of a body pursuant to paragraph 3 of Article 38a or a certification body pursuant to paragraph 3 of Article 39a², or
2. If the Union-wide compliance procedure did not lead to a Union-wide binding decision pursuant to Article 56 (8) a decision shall be taken by the European Data Protection Board:
 - (a) If less than one third of the supervisory authorities objected to the draft decision of the lead authority, the European Data Protection Board shall without delay issue the applicant the compliance decision. The compliance decision of the European Data Protection Board is binding for all supervisory authorities. The binding effect of the decision is limited by the results of a judicial review.

¹ Provisions regulating the procedure and legal consequences for this case have to be discussed.

² Provisions regulating the procedure and legal consequences for this case have to be discussed.

(b) If one third or more of the supervisory authorities objected to the draft decision of the lead authority, the European Data Protection Board may submit a new draft which takes due account of the comments and objections. If the revised draft is also rejected by one third or more of the supervisory authorities, the European Data Protection Board shall communicate the results to the applicant. 3. If the Union-wide non-compliance procedure (Article 57) did not lead to a Union-wide binding decision, the European Data Protection Board shall issue a non-binding opinion pursuant to Article 58a.

Article 58a

Opinion by the European Data Protection Board

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

7. In the cases referred to in paragraph 3 of Article 58, 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 matter. This opinion shall be adopted within one month by simple majority of the members of the European Data Protection Board.

- 7a. Within the period referred to in paragraph 7 the supervisory authorities shall not adopt any measures.
- 7b. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authorities and the Commission of the opinion and make it public.

8. The supervisory authorities 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 they intend to follow the opinion.
9. Where a supervisory authority does not intend to follow the opinion, it shall inform the chair of the European Data Protection Board and the Commission within the period referred to in paragraph 8 and shall explain its refusal to follow the opinion.
10. (...)
11. (...).

Article 59

Opinion by the Commission

(...)

Article 60

Suspension of a draft measure

(...)

Article 61

Urgency procedure

[No changes to the text in Doc. 17831/13]

Article 62

Implementing acts

[No changes to the text in Doc. 17831/13]

SECTION 3

EUROPEAN DATA PROTECTION BOARD

Article 64

European Data Protection Board

1. A European Data Protection Board is hereby set up. ***It shall have legal personality.***

[No changes to paragraph 2 till 4]Article 65

Independence

to

Article 72

Confidentiality

[No changes to the text of Article 64 to Article 72 in Doc. 17831/13]

CHAPTER VIII

REMEDIES, LIABILITY AND SANCTIONS

Article 73

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority ***in the Member State in which he or she is resident,*** if the data subject considers that the processing of personal data relating to him or her does not comply with this Regulation.
2. **By way of exception to paragraph, for operations processed by a Member State's public authorities only the supervisory authority established in that Member State shall be competent.**

3. The supervisory authority to which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint. Where the supervisory authority competent finds the complaint unfounded, it shall notify the complainant thereof and inform him of the reasons for the rejection and of the possibility of an judicial remedy pursuant Article 74. ***In all other cases the supervisory authority to which the complaint has been lodged may initiate a non-compliance procedure according to Article 57 (3).***

Article 74

Right to a judicial remedy against a supervisory authority

1. Without prejudice to any other administrative or non-judicial remedy, each natural or legal person shall have the right to an effective judicial remedy against a decision of a supervisory authority concerning them **in the country in which they are resident**, including when the complaint has been rejected, in part or wholly; ***in case of operations processed by a Member State's public authorities, in that State.***
2. Without prejudice to any other administrative or non-judicial remedy, each data subject shall have the right to a judicial remedy, ***in the country in which they are resident, obliging the supervisory authority***, where the supervisory authority does not deal with a complaint or does not inform the data subject within three months or any shorter period provided under Union or Member State law on the progress or outcome of the complaint lodged under Article 73.
3. ***If the processing of personal data was subject to a compliance decision pursuant to Art. 56 each data subject shall have the right to a judicial remedy pursuant to Article 74 Abs.1 aimed at a review of this decision as far as the rights of the data subject are concerned.***
4. ***Each controller or processor shall have the right to a judicial remedy against a decision of one or more supervisory authorities that adversely affects their interests. Where the decision has been taken pursuant to Article 56 Article 56a applies. Where the decision has been taken pursuant to Article 57 Article 57a applies.***
5. ***The Member States shall enforce final decisions by the courts referred to in this Article.***

Union-wide Compliance Procedure, Art. 56	Union-wide Non Compliance Procedure, Art. 57
Controller / Processor / National DPA files a request for compliance decision	National DPA drafts a non-compliance decision
Lead Authority: the DPA in which the Controller has its main establishment or representative in the EU.	Lead Authority: each national DPA can be a lead authority for a non-compliance decision.
Lead Authority drafts a compliance decision within two months.	
EDPB receives the draft compliance decision / draft non-compliance decision and forwards it to	
28 National DPAs	
Failure by a DPA to respond within six weeks shall be deemed as a vote in favour of the draft decision (tacit agreement).	If a DPA agrees within one month with the non-compliance decision by the lead authority, the decision shall be binding in the territory of that DPA (explicit agreement).
If no DPA objects to the decision of the lead authority, it is binding for all national DPAs.	The decision of the lead authority is binding only for the DPAs which have agreed with it.
Co-operation Procedure at the EDPB, Art. 58	
If less than 1/3 of the DPAs objected to the draft decision of the lead authority, the EDPB shall issue a compliance decision. The EDPB decision is binding for all MS. The binding effect of the decision is limited by the results of a judicial review.	The EDPB shall issue a non-binding opinion pursuant to Article 58a. The supervisory authorities shall take utmost account of the opinion of the EDPB
If more than 1/3 or more of the DPAs objected to the draft decision of the lead authority, the EDPB shall submit a new draft which takes account of the comments and objections. If the revised draft is also rejected EDPB communicates the results to the business.	

