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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) - Comments on Chapter VI and VII

Delegations find below comments from Member States on Chapters VI and VII on the document 16529/12 of 4 December 2012.

The comments received at 12 March 2013 are set out hereafter.

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BELGIUM

CHAPTER VI INDEPENDENT SUPERVISORY AUTHORITIES

SECTION 1: INDEPENDENT STATUS

Article 47 Independence

3. *Members of the supervisory authority shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.*

4. *Members of the supervisory authority shall behave, after their term of office, with integrity and discretion as regards the acceptance of appointments and benefits.*

BE thinks that §§3 and 4 should be moved in the recitals.

Article 48 General conditions for the members of the supervisory authority

1. *Member States shall provide that the members of the supervisory authority must be appointed either by the parliament or the government of the Member State concerned.*

BE considers that the members of the supervisory authority must always be appointed by the parliament. An appointment by parliament is more in line with the conditions of independence set out in the judgement of the Court of Justice of the 9 March of 2010.

At least, the participation of the parliament in the appointment procedure should be required.

4. *A member may be dismissed ~~or deprived of the right to a pension or other benefits in its stead by the competent national court~~, if he ~~the member~~ no longer fulfils the conditions required for the performance of his ~~the~~ duties has member of the supervisory authority ~~or is guilty of serious misconduct~~.*

BE considers that the § 4 is too detailed. The consequences linked to the fact that a member no longer fulfils the conditions required for the performance of the duties or is guilty of serious misconduct should be left to MS.

Article 49 Rules on the establishment of the supervisory authority

1. Each Member State shall provide by law within the limits of this Regulation:

(a) the establishment and status of the supervisory authority;

(b) the qualifications, experience and skills required to perform the duties of the members of the supervisory authority;

(c) the rules and procedures for the appointment of the members of the supervisory authority, as well the rules on actions or occupations incompatible with the duties of the office;

(d) the duration of the term of the members of the supervisory authority which shall be no 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 procedure;

(e) whether the members of the supervisory authority shall be eligible for reappointment;

(f) the regulations and common conditions governing the duties of the members and staff of the supervisory authority;

(g) the rules and procedures on the termination of the duties of the members of the supervisory authority, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

2. A member of a supervisory authority shall not exercise, in a same case, in one hand the competences laid down in article 53.1 a) to h) and 53.4 and in the other hand the competences laid down in article 53.1 i) to j) and 53.2.

See above general remark in the beginning of article 47.

SECTION 2: DUTIES AND POWERS

Article 51 Competence

2. Where the processing of personal data takes place within several Member state ~~the context of the activities of an establishment of a controller or a processor in the Union~~, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, without prejudice to the provisions of Chapter VII of this Regulation.

2 bis. Where the processing of personal data takes place in one or more Member state but is directed to a particular data subject group of a particular Member state, the supervisory authority of this last Member state is competent for such processins.

Although on the surface, the principle of one stop shop is attractive, however, BE has serious reservations about its feasibility.

BE considers that art. 51.2 will result in significant conflicts of competence between DPA's.

The criterion of the "main establishment" is not a good one. A possible alternative criteria could be that: a DPA is competent in cases where the controller is directed to, through his/her activities, a particular customer group/market on the territory of a MS where the DPA has competences.

Moreover BE thinks that the word “competent” is not clear.

BE believes that the role of a lead authority should not be seen as an exclusive competence, but rather as a way of cooperation with other competent supervisory authorities, as the ‘lead authority’ will depend on the input and support of other supervisory authorities.

Therefore, BE has a scrutiny reservation on article 51.

Article 52 Duties

1. The supervisory authority shall:

(a) monitor and ensure the application of this Regulation;

(b) hear complaints lodged by any data subject, or by an association representing that data subject in accordance with Article 73, investigate, to the extent appropriate, the matter and inform the data subject or the association of the progress and the outcome of the complaint 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 and ensure the consistency of application and enforcement of this Regulation;

(d) conduct investigations either on its own initiative or on the basis of a complaint or on request of another supervisory authority, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;

(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) be consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data, in particular in the preparation of a legislative measure to be adopted by the national parliament which defines the nature of the processing or of a measure based on such a legislative measure;

(f) bis. Decide in which cases Privacy Impact Assessment referred to in article 33, needs to be carried out;

(g) authorise and be consulted on the processing operations referred to in Article 34;

(h) issue an opinion on the draft codes of conduct pursuant to Article 38(2);

(i) approve binding corporate rules pursuant to Article 43;

(j) participate in the activities of the European Data Protection Board.

Article 53 Powers

1. Each supervisory authority shall have the power:

(a) to notify the controller or the processor of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, order the controller or the processor to remedy that breach, in a specific manner, in order to improve the protection of the data subject or, where necessary, oblige the controller to communicate the personal data breach to the data subject ;

(b) to order the controller or the processor to comply with the data subject's requests to exercise the rights provided by this Regulation;

(c) to order the controller and the processor, and, where applicable, the representative to provide any information relevant for the performance of its duties;

(d) to ensure the compliance with prior authorisations and prior consultations referred to in Article 34;

(e) to warn or admonish the controller or the processor;

(f) to order the rectification, erasure or destruction of all data when they have been processed in breach of the provisions of this Regulation and the notification of such actions to third parties to whom the data have been disclosed;

(g) to impose a temporary or definitive ban on processing;

(h) to suspend data flows to a recipient in a third country or to an international organisation;

(i) to issue opinions on any issue related to the protection of personal data;

(j) to inform the national parliament, the government or other political institutions as well as the public on any issue related to the protection of personal data.

2. Each supervisory authority shall have the investigative power to obtain from the controller or the processor:

(a) access to all personal data and to all information necessary for the performance of its duties;

(b) access to any of its premises, including to any data processing equipment and means, where there are reasonable grounds for presuming that an activity in violation of this Regulation is being carried out there.

The point b) of article 53.2, raises the question of access to private homes. In BE, a warrant of a judge is required.

The powers referred to in point (b) shall be exercised in conformity with Union law and Member State law.

3. Each supervisory authority shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

4. Each supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

BE has a scrutiny reservation on the §4 of article 53.

CHAPTER VII CO-OPERATION AND CONSISTENCY

SECTION 1: CO-OPERATION

GENERAL REM.: BE considers that Articles 55 and 56 have to be clarified. If a decision must be taken that involves both the lead DPA in the meaning of Article 51(2) and another concerned DPA according to Article 51(1), the lead DPA and the national ‘on-site’ DPA should act *in agreement* regarding the assessment of the case and of the measures to be taken. Where the concerned DPA’s do not reach consensus on the assessment of the case and/or measures to be taken on a bilateral or multilateral basis, the case should be submitted to the consistency mechanism as in Article 57.

Article 55 Mutual assistance

1. Supervisory authorities shall provide each other 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 prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to be affected by processing operations.

BE thinks that it is necessary to ensure a mutual assistance, in terms of budget for DPA’s, but also in terms of addressing **important details of the manner in which mutual assistance is to be put to practice**. The use of language, deadlines, the amount and nature of information requested as well as technical means, formats and procedures for information sharing, are all issues that in practice are vital to ensure effective cooperation between DPA’s and therefore also stand at the core of the “one-stop shop” principle.

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Regulation.

BE thinks that a distinction should be made between provisionnal measures and definitive measures.

SECTION 2 CONSISTENCY

BE welcomes the principle of the consistency mechanism. But BE thinks that the entire section 2 should be redrafted. The aim is to put in place a clear, rapid and usable consistency mechanism. The consistency mechanism should be compatible with the economic life of the European Union. The entire procedure should not exceed 4 months.

Indeed for companies which have global activities in multiple MS, most if not all the decisions of the DPA's should be referred to the EDPB. This is not feasible.

Article 58 Opinion by the European Data Protection Board

1. Before a supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

2. The obligation set out in paragraph 1 shall apply to a measure intended to produce legal effects and which:

(a) relates to processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour; or

(b) may substantially affect the free movement of personal data within the Union; or

(c) aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5); or

(d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or

(e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or

(f) aims to approve binding corporate rules within the meaning of Article 43.

~~3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.~~

BE considers that the scope of the consistency mechanism is considerably broad due to the paragraph 3 and 4 of the article 58. BE proposes to delete those paragraphs.

~~4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter shall be dealt with in the consistency mechanism.~~

BE considers that the scope of the consistency mechanism is considerably broad due to the paragraph 3 and 4 of the article 58. BE proposes to delete those paragraphs.

7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by simple majority of its members or any supervisory authority or the Commission so requests within two weeks ~~one week~~ after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within two months ~~one month~~ by simple majority of the members of the European Data Protection Board. 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 1 and 3, the Commission and the supervisory authority competent under Article 51 of the opinion and make it public.

BE considers that the paragraph 7 of the article 58 is unclear. Particularly regarding this wording: “so decides by simple majority of its members or any supervisory authority or the Commission so requests”.

Article 59 Opinion by the Commission

~~1. Within ten weeks after a matter has been raised under Article 58, or at the latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.~~

~~2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take utmost account of the Commission’s opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure.~~

~~3. During the period referred to in paragraph 1, the draft measure shall not be adopted by the supervisory authority.~~

~~4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.~~

BE wants the deletion of articles 59 and 60. BE thinks that both articles are in contradiction with the principle of independence of the data protection authorities.

Article 60 Suspension of a draft measure

~~1. Within one month after the communication referred to in Article 59(4), and where the Commission has serious doubts as to whether the draft measure would ensure the correct application of this Regulation or would otherwise result in its inconsistent application, the Commission may adopt a reasoned decision requiring the supervisory authority to suspend the adoption of the draft measure, taking into account the opinion issued by the European Data Protection Board pursuant to Article 58(7) or Article 61(2), where it appears necessary in order to:~~

- ~~(a) reconcile the diverging positions of the supervisory authority and the European Data Protection Board, if this still appears to be possible; or~~
- ~~(b) adopt a measure pursuant to point (a) of Article 62(1).~~

~~2. The Commission shall specify the duration of the suspension which shall not exceed 12 months.~~

~~3. During the period referred to in paragraph 2, the supervisory authority may not adopt the draft measure.~~

BE wants the deletion of articles 59 and 60. BE thinks that both articles are in contradiction of the principle of independence of the data protection authorities.

Article 61 Urgency procedure

1. In exceptional circumstances, where a supervisory authority considers that there is an urgent need to act in order to protect the interests of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded by means of an alteration of the existing state or for averting major disadvantages ~~or for other reasons~~, by way of derogation from the procedure referred to in Article 58, it may immediately adopt provisional measures with a specified period of validity. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.

BE proposes to delete “*or for other reasons*”. The urgency procedure should remain for extremely limited cases which need immediate action.

SECTION 3 EUROPEAN DATA PROTECTION BOARD

Article 64 European Data Protection Board

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. This representative does not take part of the vote. The chair of the European Data Protection Board shall, without delay, inform the Commission on all activities of the European Data Protection Board.

BE considers that the Commission could influence the decisions made by the Board. This is incompatible with the principle of independence of the Board.

BE proposes to add “This representative does not take part of the vote”.

This proposition may also be added in the article 68, paragraph 1.

Article 65 Independence

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, neither seek nor take instructions from anybody.

The paragraph 2 of the article 65 says that “*the European Data Protection Board shall, in the performance of its tasks, neither seek nor take instructions from anybody*”. But there is, in the Board, a representative of the european commission.

Article 66 Tasks of the European Data Protection Board

1. The European Data Protection Board shall ensure 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:

(a) advise the Commission, the European Parliament and the Council on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;

BE considers that transparency is essential.

(b) examine, on its own initiative or on request of one of its members or on request of the Commission the European Parliament or the Council, any question covering the application of this Regulation and issue guidelines, recommendations and best practices addressed to the supervisory authorities in order to encourage consistent application of this Regulation;

BE considers that transparency is essential.

(c) review the practical application of the guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in 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;

(g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide;

(h) examine codes of conduct and amendments or extensions to existing codes of conduct submitted to it pursuant to article 38, paragraph 3.

2. Where the Commission, the European Parliament or the Council request advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, taking into account the urgency of the matter.

BE considers that transparency is essential.

Article 68 Procedure

1. The European Data Protection Board shall take decisions by a simple majority of its members.

See remark made for the article 64.4 above

2. The European Data Protection Board shall adopt its own rules of procedure and organise its own operational arrangements. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of subgroups for specific issues or sectors and for its procedures in relation to the consistency mechanism referred to in Article 57.

Article 69 Chair

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members. One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.

2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable.

BE thinks that this article is not detailed enough and raise a lot of question such as:

- is the chairperson or deputy chairperson paid or unpaid?
- is the chairperson or deputy chairperson renewable once or more?
- Quid for the expenses for a secretariat?

...

Article 72 Confidentiality

3. The members of the European Data Protection Board, as well as experts and representatives of third parties, shall be required to respect the confidentiality obligations set out in this Article. The chair shall ensure that experts and representatives of third parties are made aware of the confidentiality requirements imposed upon them.

BE has some comprehension problems regarding the paragraph 3. The members of the EDPB have to respect the confidentiality principle. In the national level, the members of the DPA's have to respect the professional secrecy. Why this difference?

Article 46

- Paragraph 1 should be amended:

„1. Each Member State shall provide that one or more public authorities are responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. **To monitor the application of this Regulation and to contribute to its consistent application throughout the Union** For these purposes, the supervisory authorities shall co-operate with each other and the Commission.“

Change proposed to avoid confusion as regards breadth of duties and of cooperation between DPAs and the Commission. Alternatively, the phrase about protecting rights and freedoms may be deleted (was not in Directive either).

Article 47

CZ supports proposals to merge Articles 47 and 48 as the Member State law will generally be required to stipulate necessary rules and their limits.

- Paragraph 3 should be deleted.

Rules in Article 49(1)(c) will be fully sufficient.

- Paragraph 4 should be deleted.

Vague duties binding for the rest of life should be avoided, especially if their enforcement is intended by other vague provisions (Article 78).

- Paragraph 7 should be amended:

„7. Member States shall ensure that the supervisory authority is subject to financial control which shall not affect its independence. Member States shall ensure that the supervisory authority has separate ~~annual~~ budgets **that may be part of overall state or national budget**. The budgets shall be made public.“

There is no reason why the budget of DPA should not be part of state budget. The parliaments should not be forced to adopt various “separate” budgets. There is no reason why budgets should be annual if that is not a practice in the Member State concerned. The independence of DPA is promoted by adopting a budget where the resources of DPA are both specified and public.

Article 48

- Paragraph 1 should be deleted.

There is no reason why the EU should deal with the procedure of appointments. It is not realistic to fear that Member States would otherwise delegate such decision e.g. to central bank or to some municipality. The necessary rules will be provided according to Article 49(a),(c).

- Paragraph 2 should be amended:

„2. The members shall be chosen from persons ~~whose independence is beyond doubt and~~ whose experience and skills required to perform their duties notably in the area of protection of personal data are demonstrated.“

The requirement of “independence beyond doubt” is strange. Even judges are not chosen due to their independence. Rather, independence is ensured for judges when they perform their functions.

- Paragraph 3 should be deleted.

Because paragraph 5 is to be deleted as well, and otherwise paragraph 3 has no real added value.

- Paragraph 4 should be amended:

“4. Member States shall ensure that a member, **who no longer fulfils the conditions required for the performance of the duties or is guilty of serious misconduct**, may be dismissed ~~or deprived of the right to a pension or other benefits in its stead~~ **only on the basis of decision by competent national court or if the member may involve** the competent national court, ~~if the member no longer fulfils the conditions required for the performance of the duties or is guilty of serious misconduct.~~“

The original provision meant that if a member of DPA is victim of traffic accident, and cannot work anymore, the court should have the power to take out his or her pension or other benefits. That is a little bit strict.

In addition, there is no need to force court decision in all cases when the member may be dismissed. The member may be convicted of crime by criminal court and then dismissed based on that independent verdict. The member may no longer fulfil the conditions required and may not wish to undergo trial because of that, etc.

- Paragraph 5 should be deleted.

CZ does not wish to introduce a system where someone is forced to continue working just because someone else did not manage to appoint a successor in time. In addition, this provision means that if someone cannot work anymore due to poor health, he or she still must work until a successor is found (and his or her pension may be taken out pursuant to paragraph 4).

Article 50

- This Article should be moved to new Article 49(h).

That way, the Member States will be able to implement professional secrecy in a way compatible with e.g. criminal proceedings.

Article 51

CZ is not convinced that paragraph (2) and the concept of “main establishment” should form the main division of competences between DPAs from different Member States. First, CZ believes that there should be greater role for DPAs where processing takes place, where it has considerable impact or where data subjects affected by processing reside. Second, CZ believes that the criteria for “main establishment” in Article 4(13) may be very difficult to apply in practice.

Article 53

- Chapeau of paragraph 1 should be amended:

“1. Each supervisory authority shall, **in addition to powers provided by national law**, have the power:

Flexibility is introduced for those Member States that already apply more extensive powers.

- The last part of paragraph 2 should be amended:

“The powers referred to in **this paragraph** ~~point (b)~~ shall be exercised in conformity with Union law and Member State law. **Member States shall provide for appropriate modalities of access of supervisory authority to all personal data and to all information necessary for performance of its duties.**“

CZ is aware that the power to access all information (point a) is not limited this way in the 1995 Directive. However, since that directive has to be implemented into national law, Member States could do so in a way that respects their other (EU, international...) obligations particularly in the area of protection of classified information, which may of course be available to authorized members and personnel of DPA. It is necessary to comply with protection of classified information.

- The paragraph 3 should be amended:

“3. Each supervisory authority shall have the power to ~~bring violations of this Regulation to the attention of the judicial authorities and~~ to engage in legal proceedings, in particular pursuant to Article 74(4) ~~and Article 75(2).~~“

The Commission explained that this Article enables the DPA to notify law enforcement or criminal court. But that is not a “power” as such. It goes without saying that DPA can do that, so the provision would be understood to cover something else.

Moreover, reference to Article 75(2) is incorrect as that provision enables data subject rather than DPA.

Chapter (...) VI

General considerations:

Chapter VI includes a total of 8 articles, divided in two sections. The first section deals with the statute of the supervisory authorities (basically its independence) and the second profiles the rights and duties of these institutions.

As regards to the statute of these authorities, the Regulation does not separate excessively from the Directive. The contrary occurs with the rights and duties of the authorities, especially in what the territorial competence is concerned.

Commentaries on article 46:

We do not object the contents (...) of this article. The approach of a unique contact point for the States that have more than one supervisory authority seems correct, because otherwise it would introduce excessive difficulties for (...) management. We understand that it does not stop that at a national level, the necessary mechanisms are established so that the supervisory authorities that does not exercise the role of contact point receive all the information that might be of their interest from the authority which is contact point.

Anyhow, the participation of every supervisory authority is ensured in paragraph 2 of this article.

The only amendment we'd like to introduce at this stage deals with the possibility that supervisory authorities could be composed of one or more members. From our point of view this gives further clarification and flexibility enough for those member Estates that do think that colligated bodies may bring additional safeguards to the principle of independence.

Article 46

Supervisory authority

1. Each Member State shall provide that one or more public authorities are responsible for monitoring the application of this Regulation and for contributing to its consistent application throughout the Union, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union. For these purposes, the supervisory authorities shall co-operate with each other and the Commission.

1a. Supervisory authorities may be composed of one or more members

2. Where in a Member State more than one supervisory authority are established, that Member State shall designate the supervisory authority which functions as a single contact point for the effective participation of 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 them.

Commentaries on article 47:

We believe that it is convenient to make certain clarifications to this article to ensure the inclusion of all the supervisory authorities that might exist in a Member State in its wording.

Therefore, we propose the following amendments:

Article 47

Independence

1. The supervisory authorities shall act with complete independence in exercising the duties and powers entrusted to **them**.
2. The members of the supervisory authorities shall, in the performance of **their** duties, neither seek nor take instructions from anybody.

3. Members of the supervisory authorities shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.
4. Members of the supervisory authorities shall behave, after their term of office, with integrity and discretion as regards the acceptance of appointments and benefits.
5. Each Member State shall ensure, **in accordance with their internal distribution of competences**, that the supervisory authorities are provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of **their** duties and powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board.
6. Each Member State shall ensure, **in accordance with their internal distribution of competences**, that the supervisory authorities have **their** own staff which shall be appointed by and be subject to the direction of the head of the supervisory authorities.
7. Member States shall ensure, **in accordance with their internal distribution of competences**, that the supervisory authority is subject to financial control which shall not affect its independence. Member States shall ensure, **in accordance with their internal distribution of competences**, that the supervisory authorities have separate annual budgets. The budgets shall be made public.

Commentaries on article 48:

In our point of view, this article presents several inadequacies. Firstly, it is necessary to make some amendments so that the wording adapts to those Member States that have more than one supervisory authority.

Secondly, we believe that the actual wording does not solve correctly the different cases of ending of functions.

Thus, we propose the following amendments:

Article 48

General conditions for the members of the supervisory authority

1. Member States shall provide that the members of the supervisory authority **or authorities** must be appointed either by the parliaments or the **organs of** government ~~of the Member State~~ concerned.
2. The members shall be chosen from persons whose independence is beyond doubt and whose experience and skills required to perform their duties notably in the area of protection of personal data are demonstrated.
3. The duties of a member shall end in the event of the expiry of the term of office, **supervening incapacity to exercise the duties derived from the office**, resignation, (...), or compulsory retirement ~~in accordance with paragraph 5~~.
4. A member may be dismissed or **removed** ~~deprived of the right to a pension or other benefits in its stead~~ by the competent national **organe**~~court~~, if the member no longer fulfils the conditions required for the performance of the duties or is guilty of serious **failure to comply their official duties, or for an intentional crime declared in a final judgment.(...)** ~~misconduct~~.
5. Where the term of office expires or the member resigns, the member shall continue to exercise the duties until a new member is appointed.

Commentaries on article 49:

It is necessary to adapt the wording of this article to those States that have more than one supervisory authority.

We propose the following amendments:

Article 49

Rules on the establishment of the supervisory authority

Each Member State shall provide by law within the limits of this Regulation:

- (a) the establishment and status of the supervisory authority **or authorities**;
- (b) the qualifications, experience and skills required to perform the duties of the members of the supervisory **authorities**;
- (c) the rules and procedures for the appointment of the members of the supervisory **authorities**, as well the rules on actions or occupations incompatible with the duties of the offices;
- (d) the duration of the term of the members of the supervisory **authorities** which shall be no 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 **authorities** by means of a staggered appointment procedure;
- (e) whether the members of the supervisory **authorities** shall be eligible for reappointment;
- (f) the regulations and common conditions governing the duties of the members and staff of the supervisory **authorities**;
- (g) the rules and procedures on the termination of the duties of the members of the supervisory **authorities**, including in case that they no longer fulfil the conditions required for the performance of their duties or if they are guilty of serious misconduct.

Commentaries on article 50:

We find no reason to object this article, but for the inclusion of a wording that adapts to those States that have more than one supervisory authority.

Therefore, we propose the following wording:

Article 50

Professional secrecy

The members and the staff of the supervisory authorities shall be subject, both during and after their term of office, to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties.

Commentaries on article 51:

Although the one stop shop principle that derives from this article has been welcomed by different sectors, there are several theoretical and practical problems that might occur when it is applied. The importance of these problems urges us to introduce certain clarifications in the article.

Our starting point is the practical difficulties that might appear when a citizen or a supervisory authority tries to claim against the processing operations developed in another Member State.

In these cases, the management burdens will increase enormously as a consequence of the need of translating the documents, and of the intervention of a national authority in addition to the leader authority, generating therefore important economic and time burdens, harming both citizens and supervisory authorities.

This is why we understand that, as regards to the claims of citizens, it is more adequate to maintain the competence of the national authority when the processor or the responsible have some kind of establishment in the country, leaving the one stop shop system in these cases only for the relations of management between the actors of the processing operations (consults, authorisations, approvals...), facilitating that way the bureaucratic management of these.

To adequately fundament our position, we will reproduce the arguments of the Spanish Data Protection Authority:

The supervision referred to in article 51.2 includes the relation activities between the actor and the supervisory authority (notifications, authorisations...) and the resolution of citizens' claims. The issues derived from the competent authority system depending on the establishment affect, fundamentally, this second line of actuation and may be resumed as follows:

- It is uncertain that the protection of a fundamental right such as the protection of personal data can be conferred to administrative authorities that do not belong to the institutions of the country from where the citizen is national.*
- It is frequent to gather criteria from the regulation of other sectors (labour, financial, health...) when it comes to assess behaviours to determine their adequacy or inadequacy to the data protection regulation, although these sectors have not been yet subjected to harmonization at EU level. The tutelage of the right to data protection of a citizen from a Member State from the perspective of the regulation of another Member States will produce incomprehensible decisions for the actors, and incoherent with those adopted by the national authority in the same subject in case it is possible for them to exercise their competences.*
- The decisions of the supervisory authorities may be appealed against the Courts (art. 74.1 and national law). According to the Regulation, these appeals must be brought by the citizens, regardless of their nationality or residence, against the courts of the Member State of the leader supervisory authority (art. 74.3). This, in the practice, is as much as depriving the citizen of his right to an effective judicial tutelage. The Regulation has tried to save this obstacle envisaging that the supervisory authority of the Member State from which the citizen is national may appeal in his name (article 74.4). This possibility still has enormous practical difficulties, not to mention the incoherence of the possibility that two of the authorities that according to the law must co-operate to protect a fundamental right find themselves as different parts in a trial.*

- *The system will generate economic and bureaucratic burdens for the supervisory authorities that are difficult to foresee, and will pose logistic problems that might render it useless. A complaint (and the documents supporting it) of a Spanish citizen about the processing operations of a competent entity, for instance, a Slovenian authority, should be translated to Slovenian (or to a language accepted as common, like English), and after, the eventual decision of the Slovenian authority should be again translated to Spanish before sending it to the citizen. Similar problems will appear in the judicial phases of the procedure.*
- *There might be an interest for the corporations dedicated to the processing of personal data to relocate (“forum shopping”) their principal establishment (either materially or formally) in those Member States that apply the Regulation in the most permissive way, or in the Member State with worse conditions or less resources to effectively control the compliance with the law. Certainly, there are other reasons for a company to decide on the country in which to establish, like the labour, environmental or tax law, but for the companies that majorly develop activities linked to the processing operations of personal data, the regulation of the protection and the way it is applied may become as relevant as any other.*
- *We can presume that the distance between the leader authority and the affected citizens will make its decisions difficult to understand for people who are not familiar with the legal frame of the country where it operates, and might reduce the legitimacy of the instruments of protection of the personal data.*
- *There is no notice of other European policies where this system is applied. On the contrary, in the consumption law, very close to the data protection, the general rule is that the competence to attend the claims of the citizens is granted to the national authorities, regardless of the place where the provider of goods is established.*
- *It should be taken into account that it is extremely difficult to assess the quantitative impact of this mechanism. It seems as if it has been designed thinking of large corporations, especially those linked to the information society services, with activity in all or most of the Member States. Nevertheless, the truth is that this mechanism of competence attribution is applicable to any organization with establishments in two or more Member States.*

- *The system has a weakness in its design: the concepts of establishment and principal establishment are not sufficiently defined in the draft Regulation, what makes it even more difficult to analyse its possible impact in qualitative and quantitative terms.*

Bearing all these arguments in mind, our alternative proposal is based on the consideration that the Regulation's solution, linked to the problems mentioned, has positive elements that can simplify the activity of the corporations and that it is consistent with other mechanisms that are already being applied in different sectors with a high level of harmonization within the UE, and that do not mean a weakening of the protection of citizens' rights.

In this sense, we propose to maintain the concept of principal establishment (with the necessary clarifications to make it a more operative and precise criteria) and the competence of the authority linked to the State of the establishment for those activities of relations between corporations, but to exclude the application of this criteria when it comes to citizens' claims.

Therefore, issues such as consultations and authorisations of processing as well as approval of corporate rules (...) or of other instruments for international transfers (...) would be kept in the scope of competence of the authority of the principal establishment.

Both in these activities and those that respond the claims of citizens, it will still be necessary to submit the decisions that have legal consequences to the consistence mechanism, and the provisions of mutual co-operation between supervisory authorities would also be applicable. This would allow keeping a high level of harmonization in the application of the Regulation, similar to the one achieved by the actual wording, with the only difference that the decisions related to the answer to citizens' claims would be communicated not only by the authority of the State of the principal establishment, but by every authority affected.

The proposal basically consists on adding a sentence to article 51.2 by which the supervisory activities (...) not related to the obligations set in Chapters IV and V are excluded from its scope of application. At the same time, and to keep the consistence of the whole text, several changes in order to suppress the dispositions coherent with the universal scope of the "unique authority" option have been suppressed.

Additionally, paragraph 1 has also been modified to include a provision on the competences of supervisory authorities. The present text simply states that supervisory authorities' powers will be confined to the territories of their respective Member States, but contains no reference to the matters on which those powers will be exercised. The proposal takes into account the fact that the territorial presence of a controller or processor is no longer necessary in order to process data subjects' data, a criterion which is also present in other articles of the Regulation such as articles 3.2, 55.1, 56.2, and 58.2.a.

Therefore, the article will be worded as follows:

Article 51

Competence

1. Each supervisory authority shall exercise, on the territory of its own Member State, the powers conferred on it in *by this Regulation and shall be competent for processing taking place in the context of the activities of an establishment of a controller or a processor on its territory or affecting its residents.*" (...)
2. Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union, and the controller or processor is established in more than one Member State, the supervisory authority of the main establishment of the controller or processor shall be competent for the supervision of the processing activities of the controller or the processor in all Member States, *processor according to Chapters IV and V, (...)* without prejudice to the provisions of Chapter VII of this Regulation.
3. The supervisory authority shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Commentaries on article 52:

We find no objection to this article. Nevertheless, and bearing in mind the criteria we support in our position in relation to the strengthening of the certification policies, we believe it is important to make reference to the powers of the supervision authorities in relation to these.

We also understand that the text should envisage the possibility of opening an investigation as a result of a police, especially when due to the activities that they might develop, relevant facts that may constitute attacks on persons' privacy could be discovered.

Article 52

Duties

1. The supervisory authority shall:
 - (a) monitor and ensure the application of this Regulation;
 - (b) hear complaints lodged by any data subject, or by an association representing that data subject in accordance with Article 73, investigate, to the extent appropriate, the matter and inform the data subject or the association of the progress and the outcome of the complaint 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 and ensure the consistency of application and enforcement of this Regulation;
 - (d) conduct investigations either on its own initiative or on the basis of a complaint or on request of another supervisory authority **or on the basis of a police report**, and inform the data subject concerned, if the data subject has addressed a complaint to this supervisory authority, of the outcome of the investigations within a reasonable period;
 - (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) be consulted by Member State institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data, and in particular dealing with measures that define the nature of processing operations.
 - (g) authorise and be consulted on the processing operations referred to in Article 34;
 - (h) issue an opinion on the draft codes of conduct pursuant to Article 38(2);
 - (i) approve binding corporate rules pursuant to Article 43;
 - (j) participate in the activities of the European Data Protection Board;
 - (k) coordinate the certification policies in their respective territory pursuant to article 39.**
2. Each supervisory authority shall promote the awareness of the public on risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention.
 3. The supervisory authority shall, upon request, advise any data subject in exercising the rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end.
 4. For complaints referred to in point (b) of paragraph 1, the supervisory authority shall provide a complaint submission form, which can be completed electronically, without excluding other means of communication.
 5. The performance of the duties of the supervisory authority shall be free of charge for the data subject.
 6. Where requests are manifestly excessive, in particular due to their repetitive character, the supervisory authority may charge a fee or not take the action requested by the data subject. The supervisory authority shall bear the burden of proving the manifestly excessive character of the request.

Commentaries on article 53:

The wording of this article seems correct, although we include a reference to the possibility of the supervisory authorities to carry out audits or audit planning.

Once amended, the article would stay as follows:

Article 53

Powers

1. Each supervisory authority shall have the power:
 - (a) to notify the controller or the processor of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, order the controller or the processor to remedy that breach, in a specific manner, in order to improve the protection of the data subject;
 - (b) to order the controller or the processor to comply with the data subject's requests to exercise the rights provided by this Regulation;
 - (c) to order the controller and the processor, and, where applicable, the representative to provide any information relevant for the performance of its duties;
 - (d) to ensure the compliance with prior authorisations and prior consultations referred to in Article 34;
 - (e) to warn or admonish the controller or the processor;
 - (f) to order the rectification, erasure or destruction of all data when they have been processed in breach of the provisions of this Regulation and the notification of such actions to third parties to whom the data have been disclosed;
 - (g) to impose a temporary or definitive ban on processing;
 - (h) to suspend data flows to a recipient in a third country or to an international organisation;

- (i) to issue opinions on any issue related to the protection of personal data;
- (j) to inform the national parliament, the government or other political institutions as well as the public on any issue related to the protection of personal data;
- (k) to carry out audits or audit plans related to the protection of personal data.**

2. Each supervisory authority shall have the investigative power to obtain from the controller or the processor:

- (a) access to all personal data, including examination within the premises where they are located, and to all information necessary for the performance of its duties;
- (b) access to any data processing equipment and means, including access to the premises where they are located. (...)

The powers referred to in point (b) shall be exercised in conformity with Union law and Member State law.

3. Each supervisory authority shall have the power to bring violations of this Regulation to the attention of the judicial authorities and to engage in legal proceedings, in particular pursuant to Article 74(4) and Article 75(2).

4. Each supervisory authority shall have the power to sanction administrative offences, in particular those referred to in Article 79(4), (5) and (6).

Commentaries on article 54:

In this article it is necessary to introduce an amendment so that the wording is also coherent with those countries that have more than one supervisory authority.

Article 54
Activity report

Each supervisory authority must draw up an annual report on its activities. The report shall be presented to the ~~national~~ **respective parliament and/or the other authorities designated by the national law** and shall be made available to the public, the Commission and the European Data Protection Board.

Conclusions:

The approach on this chapter seems correct in general terms.

The main element of innovation is the one envisaged in article 51, which establishes a system of one stop shop for the exercise of supervision or control powers when the responsible or the processors of personal data have more than one establishment in the EU.

This system has been welcomed by most of the actors involved, because they appreciate the simplification of administrative management and the juridical security. Despite this, from the perspective of the exercise of rights, we believe that the system proposed can produce practical difficulties and an increase of the costs that might become unbearable.

This is why we try to introduce a mid-point solution for the cases in which the responsible or the processor is established in more than one Member State. In these cases, we keep the principle of one stop shop for the activities of management with the corporative sector, which eases the dialogue and the bureaucratic activity. When it comes to citizens' claims, however, the competence is always attributed to the supervisory authority of the state of the citizen who claims, although a co-ordination system with the supervisory authority of the principal establishment of the organization is also envisaged.

It is also important to highlight the regulation of the police report as a possible act that starts an investigation by the supervisory authority included in article 52, which will strengthen the system's capacities and will allow not obviating the important role that the police corps may play in the protection of the privacy as a fundamental right.

We have also proposed to introduce in article 53 a reference to the power of carrying out audits and audit plans granted to the supervisory authorities, in line with what is already envisaged in our law. The rest of the amendments introduced to this chapter obey to the need to adapt the wording of the articles to those Member States that have more than one supervisory authority.

However, it is necessary to continue analyzing thoroughly the possibility of introducing further amendments to this chapter, linked to the important role that the supervisory authorities should play in relation to the certification policy, one of the core elements of our position.

Finally, and in order to allow full understanding of our position on this chapter, we include hereafter the amendments foreseen in Chapter VII, Articles 55 (new Article 55a) and 58.3:

“Article 55a - Lead Authority

1. In case of complaints, investigative operations or other enforcement activities with regard to processing operations where the controller or processor is established in more than one Member State or where the processing is dedicated to residents in more than one Member State, any affected supervisory authority will inform other affected supervisory authorities before the opening of any procedure. Any affected supervisory authority may request for additional information, for cooperation with the informing authority in the terms set in articles 55 and 56 or for a coordinated action of all concerned supervisory authorities as set in paragraph 3.

2. The affected supervisory authority will submit to other affected supervisory authorities a draft of the measure and any relevant information, including a summary of the facts and the legal assessment, before it adopts a measure intended to close any procedure opened with regard to complaints, investigative operations or other enforcement activities and to produce legal effects vis-à-vis a controller or a processor or the citizens.

The affected supervisory authority shall not adopt a measure if other concerned supervisory authority objects to this measure within a period of three weeks after submittal of the draft measure. In this case, the issue shall be dealt with by the European Data Protection Board in the terms of Article 58.

3. In case that any affected supervisory authority requests a coordinated action of all concerned supervisory authorities, the supervisory authority of the Member State where the main establishment of the controller or the processor is located shall take the lead and act on behalf of the concerned supervisory authorities and in agreement with them at any stage of supervisory proceedings.

For this purpose, it shall in particular, submit a proposal of measures to the concerned supervisory authorities

4. If a concerned supervisory authority objects to the proposal within a period of three weeks after its submittal, the issue shall be dealt with the European Data Protection Board in the terms of Article 58.
5. In case there is no objection from the concerned supervisory authorities, the proposed decision shall be adopted by all concerned supervisory authorities and enforced at national level.
6. Where the lead authority does not act within one month on request of the concerned supervisory authorities, they shall be competent to take provisional measures and shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 58.

Art. 58.3

“Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56 or where an affected supervisory authority does not agree with the draft measure proposed by other affected supervisory authority or by the lead authority pursuant to Article 55a”.

(...) Chapter VII

General considerations

Chapter VII contains 18 articles, divided in three sections: co-operation between the national authorities, consistency mechanism and European Data Protection Board.

This chapter establishes the key springs to ensure the interpretation and implementation of the Regulation to be as coherent as possible in the whole EU. It also refers to juridical basis for a co-ordinated and collaborative functioning of the supervisory authorities network, which is basic for the effectiveness of the one stop shop principle, and for the strengthening and well functioning of the whole system.

Moreover, the chapter envisages the creation of the Data Protection European Board, both a think tank and a highly operative authority of the institutional framework in data protection.

The amendments we are going to propose to this chapter intend to strengthen the capacities of the Data Protection European Board, to ensure a higher efficiency in the consistency mechanism and the individual and collective independence of the supervisory authorities.

Commentaries on article 55:

The only issue to object (...) to this article is the time established for the supervisory authorities to answer the requests of other authorities. We understand that a period of 30 days may be excessive. To increase the system's celerity and credibility, we propose a 15-day period.

Article 55

Mutual assistance

1. Supervisory authorities shall provide each other 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 prompt information on the opening of cases and ensuing developments where data subjects in several Member States are likely to be affected by processing operations.

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without delay and no later than ~~one month~~ **fifteen days** after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation or enforcement measures to bring about the cessation or prohibition of processing operations contrary to this Regulation.
3. The request for assistance shall contain all the necessary information, including the purpose of the request and reasons for the request. Information exchanged shall be used only in respect of the matter for which it was requested.
4. A 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 request; or
 - (b) compliance with the request would be incompatible with the provisions of this Regulation.
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 meet the request by the requesting supervisory authority.
6. Supervisory authorities shall supply the information requested by other supervisory authorities by electronic means and within the shortest possible period of time, using a standardised format.
7. No fee shall be charged for any action taken following a request for mutual assistance.
8. Where a supervisory authority does not act within **fifteen days** ~~one month~~ on request of another supervisory authority, the requesting supervisory authorities shall be competent to take a provisional measure 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 procedure referred to in Article 57.

9. The supervisory authority shall specify the period of validity of such provisional measure. This period shall not exceed three months. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission.
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).

New article 55a

This new article 55a is an important piece of our position on the competence of the supervision authorities when it comes to complaints, investigative operations or other enforcement activities with regard to processing operations where the controller or processor is established in more than one Member State or where the processing is dedicated to residents in more than one Member State. In such cases the one stop shop principle will led to several practical issues and important costs.

According to our point of view, a sound legal framework for a structured collaboration among the authorities, which reads form recent experiences, will prove less problematic and more efficient.

Article 55a

Lead Authority

7. In case of complaints, investigative operations or other enforcement activities with regard to processing operations where the controller or processor is established in more than one Member State or where the processing is dedicated to residents in more than one Member State, any affected supervisory authority will inform other affected supervisory authorities before the opening of any procedure. Any affected supervisory authority may request for additional information, for cooperation with the informing authority in the terms set in articles 55 and 56 or for a coordinated action of all concerned supervisory authorities as set in paragraph 3.

8. The affected supervisory authority will submit to other affected supervisory authorities a draft of the measure and any relevant information, including a summary of the facts and the legal assessment, before it adopts a measure intended to close any procedure opened with regard to complaints, investigative operations or other enforcement activities and to produce legal effects vis-à-vis a controller or a processor or the citizens.

The affected supervisory authority shall not adopt a measure if other concerned supervisory authority objects to this measure within a period of three weeks after submittal of the draft measure. In this case, the European Data Protection Board shall deal with the issue in the terms of Article 58.

9. In case that any affected supervisory authority requests a coordinated action of all concerned supervisory authorities, the supervisory authority of the Member State where the main establishment of the controller or the processor is located shall take the lead and act on behalf of the concerned supervisory authorities and in agreement with them at any stage of supervisory proceedings.

For this purpose, it shall in particular, submit a proposal of measures to the concerned supervisory authorities

10. If a concerned supervisory authority objects to the proposal within a period of three weeks after its submittal, the issue shall be dealt with the European Data Protection Board in the terms of Article 58.

11. In case there is no objection from the concerned supervisory authorities, the proposed decision shall be adopted by all concerned supervisory authorities and enforced at national level.

12. Where the lead authority does not act within one month on request of the concerned supervisory authorities, they shall be competent to take provisional measures and shall submit the matter to the European Data Protection Board in accordance with the procedure referred to in Article 58.

Commentaries on article 56:

We find nothing to object to this article, except for suggesting that the period envisaged in paragraph 5 is reduced to 15 days.

The article would remain as follows:

Article 56

Joint operations of supervisory authorities

1. In order to step up co-operation and mutual assistance, the supervisory authorities shall carry out joint investigative tasks, joint enforcement measures and other joint operations, in which designated members or staff from other Member States' supervisory authorities are involved.
2. In cases where data subjects in several Member States are likely to be affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in the joint investigative tasks or joint operations, as appropriate. The competent supervisory authority shall invite the supervisory authority of each of those Member States to take part in the respective joint investigative tasks or joint operations and respond to the request of a supervisory authority to participate in the operations without delay.
3. Each supervisory authority may, as a host supervisory authority, in compliance with its own national law, and with the seconding supervisory authority's authorisation, confer executive powers, including investigative tasks on the seconding supervisory authority's members or staff involved in joint operations or, in so far as the host supervisory authority's law permits, allow the seconding supervisory authority's members or staff to exercise their executive powers in accordance with the seconding supervisory authority's law. Such executive powers may be exercised only under the guidance and, as a rule, in the presence of members or staff from the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the host supervisory authority's national law. The host supervisory authority shall assume responsibility for their actions.

4. Supervisory authorities shall lay down the practical aspects of specific co-operation actions.
5. Where a supervisory authority does not comply within **fifteen days** ~~one month~~ with the obligation laid down in paragraph 2, the other supervisory authorities shall be competent to take 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. This period shall not exceed three months. The supervisory authority shall, without delay, communicate those measures, with full reasons, to the European Data Protection Board and to the Commission and shall submit the matter in the mechanism referred to in Article 57.

Commentaries on article 57:

We have nothing to object to this article.

Commentaries on article 58:

In general, it (...) seems, as the consistency mechanism might become an extremely useful tool to ensure a uniform implementation and interpretation of the Regulation throughout the Union.

In the light of the Regulation, it appears that there is a distinction between the subjects that will be sent to the consistency mechanisms and those about which the Council will have to pronounce in the framework of this mechanism.

Article 58.1 lists a series of subjects in which the reference is compulsory, and article 58.2 envisages that the list is extended to any other subject determined by the supervisory or the Commission. Nevertheless, nothing in the Regulation establishes that the Board has to pronounce about each of those subjects. On the contrary, article 58.7 enumerates the cases in which the Board will have to pronounce an opinion.

This difference has a great practical interest. For the moment it is difficult to foresee the real quantity of subjects that will be submitted to the consistency mechanism, but it appears that it will be a high quantity. The obligation in article 58.2.a, which compels to communicate every measure implemented that might produce legal effect and that are referred to processing operations related to the offering of goods or services to citizens of more than one Member State, seem to announce, by itself, a high quantity of subjects. Anyhow, we should also take into consideration that when just one supervisory agency requests it, the subject will be sent to the consistency mechanism too. It is uncertain that the Board can examine adequately and pronounce about such a number of subjects, and in a period that adapts to the national procedure law.

This is why it is important to restrict the obligation that the Board pronounces about every subject that it has been requested to. In this sense, the prevision in article 58.7 can be accepted, but with clarifications.

The actual regulation is not consistent with the final objective of establishing reasonable deadlines to the Board's activity in the consistency mechanism. The requirement that the Board pronounces when it is decided by a majority of its members seem reasonable. This ensures that it will only pronounce opinions when there is a sufficient agreement.

It also seems reasonable that the Commission may request for an opinion, due to the nature of the Board as an adviser organ. On the other hand, it does not make much sense that the will of just one supervisory authority can condition the whole Board's activity. To open this possibility means to risk the viability of the system and does not have a solid justification.

Additionally last part of the paragraph 3 has been amended for consistency with our amendments on chapter V and due to the introduction of new Article 55a.

We therefore propose the following amendments:

Article 58

Opinion by the European Data Protection Board

1. Before a supervisory authority adopts a measure referred to in paragraph 2, this supervisory authority shall communicate the draft measure to the European Data Protection Board and the Commission.

2. The obligation set out in paragraph 1 shall apply to a measure intended to produce legal effects and which:
 - (a) relates to processing activities which are related to the offering of goods or services to data subjects in several Member States, or to the monitoring of their behaviour; or
 - (b) may substantially affect the free movement of personal data within the Union; or
 - (c) aims at adopting a list of the processing operations subject to prior consultation pursuant to Article 34(5); or
 - (d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or
 - (e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or
 - (f) aims to approve binding corporate rules within the meaning of Article 43.
3. Any supervisory authority or the European Data Protection Board may request that any matter shall be dealt with in the consistency mechanism, in particular where a supervisory authority does not submit a draft measure referred to in paragraph 2 or does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56 *or where an affected supervisory authority does not agree with the draft measure proposed by other affected supervisory authority or by the lead authority pursuant to Article 55a*
4. In order to ensure correct and consistent application of this Regulation, the Commission may request that any matter shall be dealt with in the consistency mechanism.
5. Supervisory authorities and the Commission shall electronically communicate any relevant information, including as the case may be a summary of the facts, the draft measure, and the grounds which make the enactment of such measure necessary, using a standardised format.

6. The chair of the European Data Protection Board shall immediately 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 chair of the European Data Protection Board shall provide translations of relevant information, where necessary.
7. The European Data Protection Board shall issue an opinion on the matter, if the European Data Protection Board so decides by simple majority of its members ~~or any supervisory authority~~ or the Commission so requests within one week after the relevant information has been provided according to paragraph 5. The opinion shall be adopted within one month by simple majority of the members of the European Data Protection Board. 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 1 and 3, the Commission and the supervisory authority competent under Article 51 of the opinion and make it public.
8. The supervisory authority referred to in paragraph 1 and the supervisory authority competent under Article 51 shall take account of the opinion of the European Data Protection Board and shall within two weeks after the information on the opinion by the chair of the European Data Protection Board, electronically communicate to the chair of the European Data Protection Board and to the Commission whether it maintains or amends its draft measure and, if any, the amended draft measure, using a standardised format.

Commentaries on article 59:

We propose to rule out the articles that grant the Commission with the competence to control the supervisory authorities' activity. In this issue, we can not find alternative solutions. These authorities should be individually and collectively independent, and should not be conditioned by the behaviour of administrative or political organs. The powers of the Commission as a supervisor of the European law implementation must be unique and exclusively exercised through the channels envisaged in the Treaties.

Article 59

Opinion by the Commission

- ~~1. Within ten weeks after a matter has been raised under Article 58, or at the latest within six weeks in the case of Article 61, the Commission may adopt, in order to ensure correct and consistent application of this Regulation, an opinion in relation to matters raised pursuant to Articles 58 or 61.~~
- ~~2. Where the Commission has adopted an opinion in accordance with paragraph 1, the supervisory authority concerned shall take utmost account of the Commission's opinion and inform the Commission and the European Data Protection Board whether it intends to maintain or amend its draft measure.~~
- ~~3. During the period referred to in paragraph 1, the draft measure shall not be adopted by the supervisory authority.~~
- ~~4. Where the supervisory authority concerned intends not to follow the opinion of the Commission, it shall inform the Commission and the European Data Protection Board thereof within the period referred to in paragraph 1 and provide a justification. In this case the draft measure shall not be adopted for one further month.~~

Commentaries on article 60:

We propose the suppression of this article on the basis of the abovementioned arguments.

Article 60

Suspension of a draft measure

- ~~1. Within one month after the communication referred to in Article 59(4), and where the Commission has serious doubts as to whether the draft measure would ensure the correct application of this Regulation or would otherwise result in its inconsistent application, the Commission may adopt a reasoned decision requiring the supervisory authority to suspend the adoption of the draft measure, taking into account the opinion issued by the European Data Protection Board pursuant to Article 58(7) or Article 61(2), where it appears necessary in order to:~~

~~(a) reconcile the diverging positions of the supervisory authority and the European Data Protection Board, if this still appears to be possible; or~~

~~(b) adopt a measure pursuant to point (a) of Article 62(1).~~

~~2. The Commission shall specify the duration of the suspension which shall not exceed 12 months.~~

~~3. During the period referred to in paragraph 2, the supervisory authority may not adopt the draft measure.~~

Commentaries on article 61:

We have nothing to object to this article.

Commentaries on article 62:

To ensure the coherence with the amendments of articles 59 and 60, we propose the following amendments:

Article 62

Implementing acts

1. The Commission may adopt implementing acts for:

~~(a) deciding on the correct application of this Regulation in accordance with its objectives and requirements in relation to matters communicated by supervisory authorities pursuant to Article 58 or 61, concerning a matter in relation to which a reasoned decision has been adopted pursuant to Article 60(1), or concerning a matter in relation to which a supervisory authority does not submit a draft measure and that supervisory authority has indicated that it does not intend to follow the opinion of the Commission adopted pursuant to Article 59;~~

- ~~(b) deciding, within the period referred to in Article 59(1), whether it declares draft standard data protection clauses referred to in point (d) of Article 58(2), as having general validity;~~
- (c) specifying the format and procedures for the application of the consistency mechanism referred to in this section;
- (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 58(5), (6) and (8).

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

- 2. ~~On duly justified imperative grounds of urgency relating to the interests of data subjects in the cases referred to in point (a) of paragraph 1, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 87(3). Those acts shall remain in force for a period not exceeding 12 months.~~
- 3. The absence or adoption of a measure under this Section does not prejudice any other measure by the Commission under the Treaties.

Commentaries on article 63:

We have nothing to object to the first paragraph of this article.

As regards to the second paragraph, we believe it lacks of clarity, because according to article 58, it is not always necessary to resort to the consistency mechanism.

We do not introduce a specific amendment, but we reserve the right to do so depending on the results of the Working group.

Article 63
Enforcement

1. For the purposes of this Regulation, an enforceable measure of the supervisory authority of one Member State shall be enforced in all Member States concerned.
2. Where a supervisory authority does not submit a draft measure to the consistency mechanism in breach of Article 58(1) to (5), the measure of the supervisory authority shall not be legally valid and enforceable.

Commentaries on article 64:

Articles (...) 64 to 72 create the Data Protection Board, as a heir institution of the actual article 29 working group. The board will be composed of the head of one supervisory authority of each Member State and the European Data Protection Supervisor.

The Commission shall have the right to participate in the activities and meetings of the European Data Protection Board. The board will act independently when exercising its tasks pursuant articles 66 and 67.

The Board shall have a Chair, chosen amongst its members for a period of five years, and two deputy chairpersons, one of whom shall always be chosen by the European Data Protection Supervisor.

Amongst the tasks of this board, we must highlight that it is the institution in which the consistency mechanism will be developed.

We have nothing to object to this article.

Nevertheless we are of the opinion that the European Data Protection Board should be considered as the main authority at European level concerning personal data protection.

That means that the Commission should not have any kind of power that deals with coherence mechanism and the uniform interpretation of the Regulation. This point of view is fully consistent with Article 8 (3) of the Charter of Fundamental Rights of the European Union.

Additionally the possibility of creating a specialized body could be considered as well, adding then prescriptive competences to it. **We'd like to propose to the Presidency further discussion on its important issue.**

Commentaries on article 65:

We have nothing to object to this article.

Commentaries on article 66:

Attending to the special role that our position confers to the certification policies, we believe that the European Board (...) should have a fundamental part in their design and development
Therefore, we propose the following amendment:

Article 66

Tasks of the European Data Protection Board

1. The European Data Protection Board shall ensure 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:
 - (a) advise the European Parliament, the Council and 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 addressed to the supervisory authorities in order to encourage consistent application of this Regulation;
 - (c) review the practical application of the guidelines, recommendations and best practices referred to in point (b) and report regularly to the Commission on these;
 - (d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in 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;
- (g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide;
- (h) **develop (...) the guidelines (...) of the european certification policies.**
- (i) **monitoring and evaluate the european certification policies, submitting the results to the Parliament, the Council and the Commission.**

2. Where the Commission requests advice from the European Data Protection Board, it may lay out a time limit within which the European Data Protection Board shall provide such advice, 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.
4. The Commission shall inform the European Data Protection Board of the action it has taken following the opinions, guidelines, recommendations and best practices issued by the European Data Protection Board.

Commentaries on article 67:

We have nothing to object to this article.

Commentaries on article 68:

We have nothing to object to this article.

Commentaries on article 69:

It surprises that one of the deputy chairs is perpetually granted to the European Data Protection Supervisor.

According to Regulation 45/2001, the European Data Protection Supervisor is the supervisory authority for the institutions and organisms of the EU. It envisages a statute and functioning very similar to those attributed by national law to their supervisory authorities.

Certainly, the fact that the supervisory authority has the task to assess on data protection to the European institutions and, particularly, that the Commission has to consult the supervisory authority when adopting any legislative initiative related to data protection (pursuant to article 28.1 of the Regulation 45/2001), puts it in a position of privilege to analyse and explain the EU's norms on data protection. Nevertheless, that position, similar to the one assumed by the national authorities in relation to their norms and institutions, is neither due to nor consequence of the supervisor having some kind of formal or institutional pre-eminence towards the national authorities, even in terms of co-ordination or impulse of their activities.

Therefore, there is no reason to justify the European Data Protection Supervisor having a better right than any other national authority to a permanent deputy chair in the European Data Protection Board.

Article 69

Chair

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members. ~~One deputy chairperson shall be the European Data Protection Supervisor, unless he or she has been elected chair.~~
2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable.

Commentaries on article 70:

We have nothing to object to this article.

Commentaries on article 71:

Until now, the Data Protection Unity of the Commission has developed the Secretariat of the Data Protection Supervisory Authorities' Group (Art. 29). Despite this, to strengthen the independence and efficiency of the future Board it is required to establish new arrangements in its secretariat and technical and logistic support to their works.

It seems that the Commission has considered several options and has found no other alternative that to situate the secretariat on the European Data Protection Supervisor. This solution presents numerous obstacles.

The Supervisor is really a supervisory authority whose main (...) functions are related to data protection (...) activities of the institutions and organisms of the Union. Therefore, it lacks the resources to face the tasks involved in being the secretariat of the future Board: availability and management of meeting rooms for plenary sessions and working groups, translation, communication systems between authorities and the Board, web site, trip and meeting organizations... . It is clear that all this issues could be faced with a specific resource assignment to the Supervisor, but this would not resolve the main problem which is precisely that the Supervisor is not an organ with the legal conditions to assume these management tasks.

Furthermore, the Supervisor is a Council member with right to vote. It does not seem admissible that at the same time it runs the secretariat, when among its tasks would be “to provide analytical, administrative and logistical support to the European Data Protection Board” (art. 71.2), “the preparation and follow-up of the meetings of the European Data Protection Board” (art. 71.3.e) and “the preparation, drafting and publication of opinions and other texts adopted by the European Data Protection Board” (art. 71.3.f).

To sum up, as the secretariat the Supervisor would be in conditions of controlling, directing or influencing the works of the Board, which does not seem compatible with its condition of active member of th Board.

Therefore, we understand that it should be the Commission who provides with the reources so that the Board has a secretariat adequate to its tasks, otherwise, if a body is created, the Board will then be able to have its own secretariat. (...)

Article 71

Secretariat

1. The European Data Protection Board shall have a secretariat. ~~The European Data Protection Supervisor shall provide that secretariat.~~ *The Commission shall provide that secretariat by allocating dedicated staff and resources in such a way as to ensure an efficient and independent fulfilment of its functions under the direction of the Chair”*

(...)2. The secretariat shall provide analytical, administrative and logistical support to the European Data Protection Board under the direction of the chair.

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;
- (f) the preparation, drafting and publication of opinions and other texts adopted by the European Data Protection Board.

Commentaries on article 72:

We have nothing to object to this article.

Conclusions:

Due to the large territorial scope of the present instrument, it is necessary to establish tools to ensure that the interpretation and application by the multiple supervisory authorities is coherent. In our view, the co-operation and coherence mechanisms are fundamental to ensure positive results of the uniformation intended by the Regulation. Furthermore, the viability of the one stop shop principle also requires a solid co-operation between the national authorities.

We believe that the rules proposed to regulate the co-operation between the supervisory authorities are correct in essential; so few amendments have been introduced in this point.

The European Data Protection Board and the consistency mechanism will have an outstanding influence on the activity of the national authorities, and therefore, on the implementation of the regulation on Member States, citizens and organizations. They also constitute a key element for the harmonized implementation of the European norm and the co-operation between supervisory authorities.

We should bear in mind that the Board, in the framework of the consistency mechanism or beyond it, will pronounce on the measures intended to be adopted by the national supervisory authorities, but also on the compliance by these authorities with the duty of mutual co-operation, or, in its role of Commission's assessment organ, with any issue related to the data protection in the EU.

The Board and the consistency mechanism are a necessary complement to the existence of a unique norm with direct effect on the whole EU territory but nevertheless implemented by 27 national authorities. Its decisions are not binding at this stage, but produce a series of effects, and anyhow, will have a great influence, impact and public relevance.

This is why it is of the utmost importance to ensure that the Board and the consistency mechanism function adequately, and that its decisions, adopted by simple majority of its members, are adopted in the best conditions and always safeguarding the principle of independence of the supervisory authorities.

The approach on the regulation of the European Data Protection Board seems adequate, and according to the key role that the certification policy has in our position, we regard the Board as a fundamental organ to design these policies.

(...) Nevertheless, we have clear objections on the Board's composition, and specifically, on the fact that one of the deputy chairs is granted on perpetuity to the European Data Protection Supervisor. We do not agree either with assigning the secretariat of the Board to this organ.

FINALLY WE WOULD LIKE TO START A DISCUSSION ON THE POSSIBILITY THAT THE BOARD BECOMES A BODY WITH ITS OWN PERSONALITY CAPABLE OF PRESCRIPTIVE RESOLUTIONS.

ITALY

Article 46 - Supervisory authority

No comment.

Article 47 - Independence

Recognition of the supervisory authority's independence is important, and this independence should be interpreted in the light of the criteria set in the case-law of the Court of Justice (cases C-518/07 v. Germany and C-614/10 v. Austria).

Paragraph 5: it would be advisable to provide for a European funding mechanism as well, given that the supervisory authorities' duties are becoming increasingly "European". The concept of "adequate" resources should be better defined, possibly by linking it to national population (for example, a set amount plus a variable amount linked to national population).

Paragraph 6: it seems inappropriate to state that the staff of each authority should be "appointed" by the head of the authority itself. We should ensure that recruitment procedures are transparent and public, not subject to discretion.

Article 48 - General conditions for the members of the supervisory authority

Paragraph 1 relates to appointment by "the parliament or the government". It would be better if appointments did not come exclusively from the government, precisely to ensure that independence requirements are not. In any case, it is preferable that parliament be involved, particularly if we consider the Court of Justice's meetings stated in the abovementioned cases (C-518/07, C-614/10) on the relationship between supervisory authorities and ministries responsible for funding: that conflicts of interests may in fact arise, and there is a risk of submission to the executive.

Article 49 - Rules on the establishment of the supervisory authority

With regard to point (d), we suggest considering the possibility of establishing, in addition to the minimum duration, a maximum duration of the term of the members of the supervisory authority, using similar provisions to those of, for example, Article 69(2), which sets the term of office of the chair and deputy chairpersons of the European Data Protection Board at five years.

Point (e) could set a limit on the number of times the members of the supervisory authority may be reappointed.

Article 50 - Professional secrecy

No comment.

Article 51 - Competence

As a general point, the implications of the concept of "main establishment" as defined in Article 4(13) still need to be fully explained. Moreover, Article 51 seems to leave various gaps, since it does not regulate all processing cases for which the national supervisory authorities may be competent. More specifically:

Paragraph 1: we suggest reformulating the wording to make clear that each supervisory authority has exclusive competence to supervise processing operations which take place in the territory of its own Member State, in order to ensure that they comply with the Regulation, including when individuals residing in the Member State are subject to other processing operations carried out by a controller, wherever the latter is located (within or outside the EU): this last point is referred to in Article 3(2) of the Regulation.

Accordingly, it would be appropriate to state that *"Each supervisory authority shall be competent to supervise all processing operations which take place on the territory of its own Member State, as well as cases in which residents of its Member State are subject to other processing operations carried out by a controller established in the EU or outside the EU, within the scope of this Regulation. In this regard, the supervisory authority shall exercise, on the territory of its own Member State, the powers conferred on it in accordance with this Regulation."*

Paragraph 2: we enter a scrutiny reservation in order to fully assess how the consistency mechanism works in terms of the role of the "lead authority" and the binding nature of the decisions it takes (through the consistency mechanism described in Articles 57 to 63).

Article 52 – Duties

We enter a general scrutiny reservation on this Article, in order to fully assess its impact on the operation and effectiveness of enforcement activity, in comparison with the current situation under the Italian Personal Data Protection Code (Legislative Decree No 196/2003: Articles 153-160, but also Articles 141-152 insofar as these relate to seeking protection from the Data Protection Supervisor). In fact, it does not seem possible for the whole range of rules, including procedural rules, currently dealt with in Italian domestic law to be exhaustively covered through Articles 52-54 of the proposed Regulation.

There should also be a more thorough investigation of the interaction between these rules and those contained in Articles 73 (right to lodge a complaint with a supervisory authority), 74 (right to a judicial remedy against a supervisory authority), and 75 (right to a judicial remedy against a controller or processor), as well as those relating to sanctions.

We would like to make the following comments on this matter:

Article 52(1)(b): "complaints": the scope of this provision should be clarified. Should "complaints" be understood as meaning formal complaints (as referred to in Articles 145 onwards of the Italian Personal Data Protection Code, or does this term include every type of "report", even those not necessarily formulated as a "complaint"? The latter possibility seems to be covered by Article 73(3).

In addition, clarification is needed in respect of the relationship between a data subject and the "associations" representing him/her. Article 73(3) seems to also allow representation in order to protect collective interests, not specific data subjects whose rights have been violated.

Moreover, the terminology used in this provision creates several grey areas, because (a) it establishes an obligation to inform the data subject or the association "*in particular if further investigation [...] is necessary*", rather than in every case, and (b) it establishes that this information should be provided "*within a reasonable period*". This second instruction seems difficult to reconcile with the definite deadlines set by the Italian legislation on this subject. For example, the Italian Personal Data Protection Code sets a period of 60 days for formal complaints under Article 145 to be processed. This may be extended to 100 days in particularly complex cases. We suggest investigating the possibility of setting a maximum time limit, in order to avoid a significant lack of uniformity in the response times of the various national supervisory authorities when faced with the same complaints or requests.

To this end, a reference period could be set, for example, at the ten weeks afforded to the Commission to express an opinion on a draft measure under normal conditions, as stated in Article 59(1).

Article 52(1)(c): this article provides that the supervisory authority should share information with "*other supervisory authorities*". Should we take this to mean only supervisory authorities in the field of data protection? Or also those in other areas?

Article 52(1)(f): it seems necessary to clarify whether the consultation obligation should translate into a formal opinion, which seems desirable in order to ensure that the consultation has an effect. There should also be an analysis of the link between this provision and Article 53(1)(i), on the authority's power to "*issue opinions on any issue related to the protection of personal data*".

Article 52(6): the "*manifestly excessive*" nature of a data subject's request seems to be a rather vague concept. It would be appropriate for the supervisory authority to set general criteria for its own work, including the discretionary power not to act on individual requests, on the basis of transparent and public criteria, possibly through the European Data Protection Board. Alternatively, when the authority claims that a request is manifestly excessive, the burden of justifying that request could be borne by the data subject concerned.

Article 53 - Powers

We enter a general scrutiny reservation, broadly for the reasons given above.

In this regard:

- There is no reference to the power to require certain behaviour or conduct from several controllers/processors. Paragraph 1(e) uses the expression "*to warn or admonish*" the controller. This is restrictive and seems to refer exclusively to one specific controller/processor.
For this reason, it would be useful to provide that this power should be applicable to a group of people, for example through general requirements or guidelines which may even be adopted on the authority's own initiative.
- As stated with regard to Article 52(1)(f), we need to clarify the link between the power to "*issue opinions*" provided for in Article 53(1)(i) and the obligation to "*be consulted*" established in Article 52(1)(f), explaining that the "*opinions*" in question can also be issued in the cases mentioned in that article.
- We suggest replacing the current wording of paragraph 4 with the following: "*Each supervisory authority shall have the power to sanction the administrative offences referred to in Article 79*", since it seems more correct to refer to Article 79 in its entirety.

Article 54 - Activity report

It would be appropriate to establish a closer link between the supervisory authorities and national parliaments, going beyond mere "*transmission*" of the annual activity report. As a minimum, it should be established that "*the report shall be presented to the national parliament*" [which is the current wording in English]. Moreover, we do not understand why the report should not also be made available to the European Parliament and the Council, or in any case why these institutions should not be informed of its publication on the authority's website.

CHAPTER VII - CO-OPERATION AND CONSISTENCY

Section 1 – Co-operation

Article 55 - Mutual assistance

There should be an addition to this article explaining the mutual assistance mechanism in the cases described by Article 51(2), with rules explicitly establishing the role and duties of the "lead authority".

Nevertheless, the Commission cannot define more specific procedural provisions through implementing acts (as provided for in paragraph 10), since this would impinge upon the independence of the supervisory authority, and these provisions would be better specified by the European Data Protection Board.

Specifically:

Paragraph 1: the information to be exchanged should not be limited to that listed in this paragraph, which should not be considered exhaustive (as implied by the phrase "in particular").

In paragraph 4(a), we suggest inserting, after "*it is not competent for the request*", the following: "*in this case it shall provide an explanation of why it does not consider itself competent*".

In paragraph 4(b), we suggest inserting, after "*with the provisions of this Regulation*", the following: "*in this case it shall provide an explanation of why the requested action is considered incompatible*".

Paragraph 10: we do not believe that the Commission should specify these points through implementing acts. It would be better if the European Data Protection Board were competent for these issues (formats, procedures).

Article 56 - Joint operations of supervisory authorities

No comment.

Section 2 – Consistency

Article 57 - Consistency mechanism

No comment.

Articles 58, 59 and 61

In general, there should be a clear and unambiguous explanation of the process of interaction between each national supervisory authority, the European Data Protection Board and the Commission; a process which originates in a request for an opinion. This also applies to the urgency procedure, which allows opinions to be adopted either by the Commission, pursuant Article 59(1), or by the European Data Protection Board, pursuant to Article 61(4), and here again defines various different deadlines and decision-making processes.

Article 58 - Opinion by the European Data Protection Board

Paragraph 1: we do not agree that the European Data Protection Board should be asked for its opinion in all the cases listed (exhaustively) in paragraph 2. We do not understand why, if the competent authorities have reached an agreement, the Board should also intervene, especially if only two or three Member States are involved. We therefore suggest adding the following, at the end of paragraph 1, "*when the coordination mechanism implemented by the lead authority does not allow a joint solution to be reached*".

Paragraph 2:

- Point (a): the wording is rather general, and thus any activity could potentially be subject to an opinion. Moreover, there should be an explanation of what is meant by "monitoring" of behaviour, as already mentioned in relation to earlier articles (Articles 34 and 35 in particular).
- Point (b): we need to clarify how the significance of the impact is measured.
- It also seems appropriate to add the Board's competence in relation to administrative sanctions as per Article 79 of the proposal, particularly in order to overcome any differences between national authorities in the application of these sanctions (for example, by setting a minimum/maximum amount for the fines referred to in that article).

Paragraph 3: there is a risk that the provision according to which "Any supervisory authority" may request an opinion from the Board would frustrate the Board's efforts to ensure consistency, since the number of requests may create an excessive workload. We could therefore consider a mechanism through which the Board would vote (by majority) on the need for an opinion in the event of such requests.

Paragraph 4: we should clarify which "matters" are covered by this provision. The term probably refers to the matters mentioned in preceding paragraphs 2 and 3 of this article. The consistency mechanism should therefore be understood as being limited specifically to measures "*intended to produce legal effects*", or indeed to issues connected to a lack of mutual assistance. The Commission should provide further clarification.

Paragraph 6: we suggest greater flexibility in the requirement for the chair to inform the members of the Board, including with regard to translations; we propose replacing "immediately" with "*without delay*".

Paragraph 7: the same applies to the deadlines indicated here. This provision is excessively prescriptive.

Paragraph 8: the supervisory authorities and lead authorities are to "take account" of the Board's opinion. This provision seems too weak to guarantee the effectiveness of the lead authority's coordination, or in any case that of the supervisory authority (in the system suggested by the Commission in Article 51(2)). On the basis of a suitable voting mechanism for the Board, and the obligation to co-operate established in Article 52(1)(c), the opinion given by the Board could be binding and enforceable with regard to all the supervisory authorities concerned (i.e. those involved in the consistency mechanism), but also the other national supervisory authorities, should the same problem recur. Given the above, we enter a scrutiny reservation on this paragraph.

Article 59 - Opinion by the Commission

Paragraph 1: the opinion by the Commission, as currently structured, falls outside the consistency mechanism and the powers of the European Data Protection Board. This seems to create an overlap with the opinion by the Board, as well as with the competence of the national supervisory authorities.

It should be established that the Commission may adopt an opinion on the issue raised in accordance with Article 58 (through an opinion by the Board) or Article 61 (urgent measures decided on by the supervisory authority "in exceptional circumstances" by way of derogation from Article 58) only if the procedure referred to in Article 58 has not been successful.

Paragraph 2: the supervisory authority is to take "*utmost account*" of the Commission's opinion. Further explanation of this provision is needed.

Paragraph 4: the obligation to declare an intention not to follow the opinion of the Commission brings about the "suspension" of the specific measure, in accordance with Article 60. Since this suspension seems highly questionable, we enter a scrutiny reservation linked to the outcome of discussions on Article 60.

Article 60 - Suspension of a draft measure

Together with Article 62, this provision unduly and excessively interferes with national supervisory authorities' powers and impinges upon their actual independence. This article allows the possibility of suspending a specific measure, that is to say a measure adopted on the basis of "specific" requests from controllers / processors / data subjects. Amongst other issues, a suitable legal basis would be lacking and could not be found in the Treaties (unlike for the Commission's antitrust powers, which seem to have been inappropriately used as a model for this provision). We therefore suggest removing or completely rewriting this article. In any case, we enter a general scrutiny reservation.

Article 61 - Urgency procedure

No comment.

Article 62 - Implementing acts

In general, these should be rejected in their entirety, since they go significantly beyond the rationale for the adoption of such instruments on the basis of the Treaties. In all the cases mentioned, the involvement of the European Data Protection Board and/or the consistency mechanism (suitably amended in line with our comments above) would be more appropriate, and would better respect the independence of the national supervisory authorities.

Article 63 - Enforcement

No comment.

CHAPTER VII - CO-OPERATION AND CONSISTENCY

Section 3 – European Data Protection Board

Article 64 - European Data Protection Board

Paragraph 4: we have various doubts about the role of the Commission in the European Data Protection Board's activities. These relate to both the lack of symmetry in the information provided, compared to the other European institutions, and the excessive nature of the obligations this paragraph imposes on the chair of the Board. If a Commission representative sits on the Board itself, we fail to understand why the chair must inform the Commission "without delay" on "all activities" of the Board which, in some cases, may be of no particular interest to the institution.

Article 65 - Independence

No comment.

Article 66 - Tasks of the European Data Protection Board

This article is modelled, at least in part, on Article 30 of Directive 95/46/EC. However, we would like to broaden the list of tasks of the Board, in the light of our comments on earlier articles of the proposed Regulation. More specifically, in relation to paragraph 1:

- For all cases in which recourse to delegated acts adopted by the Commission is not considered appropriate, it should be indicated that guidelines from the Board would be preferable. This could be achieved by amending the text of paragraph 1(b) so that the "*guidelines, recommendations and best practices*" would address not only to the "supervisory authorities" but to anyone.
- For all cases in which recourse to implementing acts adopted by the Commission is not considered appropriate, it should be indicated that guidelines from the Board would be preferable. This could be achieved by amending the text of paragraph 1(b) so that the "*guidelines, recommendations and best practices*" would address not only to the "supervisory authorities" but to anyone.
- For decisions relating to the consistency mechanism (Articles 57 and 58): decisions taken by the Board should be binding upon all the supervisory authorities involved in the consistency mechanism. Point (d) of paragraph 1 could therefore be amended to establish this. Upstream, this would entail an institutional change, assigning legal personality to the Board and establishing its powers and tasks in greater detail.

- The Board should be involved in the adoption of European codes of conduct (Article 38) and the establishment of EU certification systems (Article 39).

Paragraph 3 could expressly state that the information referred to should be made public on an autonomous website, which should be easy for all users to consult, not just the Commission.

Article 67 - Reports

No comment.

Article 68 - Procedure

No comment.

Article 69 - Chair

Paragraph 1: there needs to be clarification of why one of the two deputy chairpersons should always be the European Data Protection Supervisor, particularly given the provisions of Article 71, which appoints the Supervisor to provide the Board's secretariat. These provisions could lead to an inappropriate overlap of duties, with a risk that the secretariat would not be neutral.

With regard to paragraph 2, we suggest considering the possibility of setting a limit on the number of times the chair and two deputy chairpersons of the European Data Protection Board may be reappointed.

Article 70 - Tasks of the chair

No comment.

Article 71 - Secretariat

Our comments on Article 69 apply here.

Article 72 - Confidentiality

Paragraph 1: it seems necessary to explain what is meant by the "confidential" nature of the "discussions". The paragraph should probably be interpreted as meaning that the discussion procedure takes place in camera.

Paragraph 2: The implications of the application of Regulation (EC) No 1049/2001 should be given further consideration, especially given the proposal to establish the Board's secretariat under the auspices of the European Data Protection Supervisor.

PORTUGAL

Article 46 - Supervisory authority

In the Portuguese version of the proposal of Regulation, instead of referring to article 91, refers to article 92 (article 46 (3)).

Article 47 - Independence

Portugal believes that there may be some inconsistency between paragraph 3 of this Article, which determines that the members of the supervisory authority may not perform any professional activity whether paid or unpaid, with Article 49. (Rules on the establishment of the supervisory authority), pursuant to which each Member State shall establish by law, within the limits of this Regulation, the "rules relating on actions or occupations incompatible with the duties of the office" [c)]. It is assumed that the first regards those members who already hold positions and the second aims ineligibilities.

In general the rules / requirements applied to the supervisory authorities have a great parallel with the system of the independent administrative authorities.

Article 48 – General conditions for the members of supervisory authority

We propose the following wording for paragraph 1:

"The members of the supervisory authorities are designated by the organs of sovereignty in accordance with the Constitution and the legal traditions of each Member State."

With regard to paragraph 4, it should compete to the law of each Member State to determine the aspects listed there.

Article 64 - European Data Protection Board

It should be considered the inclusion of a reference regarding the (possible) collaboration of the European Data Protection Board with ENISA, given their role in the security of networks and information.

Article 66 – Tasks of the European Data Protection Board

With regard to paragraph 2, it is not acceptable that the Commission may impose to the European Data Protection Board, which is an independent body, deadlines for reply. It is clear that the Commission must point out the urgent consideration of a given subject. It may even mark the deadline for the desirable response. What is not acceptable is that it can impose deadlines to an independent body.

The only deadlines that really count, imposing themselves on all bodies, are those resulting directly from the law. Thus, we propose the following wording:

“Whenever the Commission request to the European Data Protection Board an advice with an urgent nature, such nature shall be communicated, and a time limit be requested. The European Data Protection Board must take into account the urgent nature of a request for advice.”

Article 71 - Secretariat

With regard to paragraph 1, it would be preferable that the European Data Protection Board could have its own secretariat, taking into account its independence and the different nature and specific features of the European Data Protection Supervisor.

SUISSE

Switzerland thanks the Presidency for the opportunity to comment on chapters V-VII of the proposal for a General Data Protection Regulation. A differentiation between provisions for the public sector and provisions for the private sector in these chapters is of our major concern. Therefore we would welcome solutions which take into account the specifics of processing of personal data by public authorities. In our view – and as an example - Article 42 paragraph 4 should not be applicable for data processing by public authorities. A transfer of personal data by public authorities to a third country should not be subject to prior authorization from the supervisory authority. Article 58 paragraph 2 is of a similar kind. In our understanding any measure according to Article 58 paragraph 2 is limited to data processing by private actors. This fact should be pointed out more explicitly in the text of the Regulation.

NORWAY

ARTICLE 46 TO 50: INDEPENDENT SUPERVISORY AUTHORITIES

We believe that the requirements set out in these articles are too detailed and that they should be simplified. We are worried that the requirements set out in Article 48 paragraph 2 to 5 will interfere with national labour law and with the right to a pension, which in Norway has constitutional protection.

Moreover we think the meaning of the expression «member of the supervisory authority» should be clarified in the legal text.

ARTICLE 60: SUSPENSION OF A DRAFT MEASURE

We think the article should be deleted. In our view it is problematic that the Commission is given competence to suspend a measure set out by a national supervisory authority.

ARTICLE 64: EUROPEAN DATA PROTECTION BOARD

We believe that the associated states' right to participate in the European data protection board should be spelled out directly in the article.

ARTICLE 69: CHAIR

In our view the term of office should be shorter than 5 years. A shorter term of office would make it easier for a head of a national supervisory authority to take on the position, without having to worry that his or her national term of office will expire.

ARTICLE 72: CONFIDENTIALITY

We believe that the provision should take the opposite starting point, and state that documents are public unless there is a specific need for confidentiality. More specific rules on when confidentiality is needed could be spelled out in the article.