

From: [REDACTED]
Sent: Wednesday, February 15, 2017 6:40 PM
To: JUST ARTICLE29WP SEC; presidenceg29@cnil.fr
Cc: [REDACTED]
Subject: Comments on 29 WP Guidelines on DPO - Data Portability - Lead Supervisory Authority

Dear Madam, Sir,

We are pleased to provide you with the following comments in the frame of the recent release, by the 29 WP of its guidelines concerning the DPO, the Lead supervisory authority and the right to data portability.

Thanking you in advance for your attention, we remain,

Yours sincerely

[REDACTED]


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On Data Protection Officers

Article 37 – 1. b)

“Large scale processing” is a too broad notion.

The 29 WP should precise furthermore the meaning of “large scale processing” with a range of examples, detailing, for instance, the numbers of clients concerned (one hundred? five thousands? more?...), the geographic extent (local, regional, national, continental...) in the frame/light of daily working cases.

Article 37 – 2.

DPO “easily accessible from each establishment” is a too broad notion.

The 29 WP should precise furthermore the meaning of “easily accessible”, for instance by stating whether or not it is applicable when DPO is working and located at the mother affiliate headquarters, and he can be contacted remotely by colleagues from the affiliates establishments in other EU member state.

Besides, in case that a DPO is appointed for a Group companies in several member states, the group companies should be authorized not to appoint local DPOs, even if where such appointment is mandatory (e.g. Germany). Flexibility should be possible for group companies, as not all of them, even international companies, cannot afford to appoint a “group” DPO plus a DPO per member state...

On the Lead Supervisory authority

Article 4 - 23) on Cross-border processing definition may be ambiguous.

Does "*cross-border*" exclusively means that the personal data must cross the border from a member state to another member state?

For instance, is it a cross-border processing when the employees' files for performance review of a group companies are filled in within the same tool that is acquired by the mother company, but the data are filled in and accessed by each company only for its own employees?

In other words, is there a cross border processing when different personal data are processed by different data controllers in different member states, but using the same tool acquired by the *mother* data controller?

On the Right to data portability

Right to portability should not be applicable in the frame of BtoB activity, as companies are not, *per se*, concerned by the rules governing personal data. Actually, collection of personal data in the BtoB only occurs for sake of commercial contact details.

At any rate, no data relating to orders background, products/services prices and rebates, products characteristics/components can be collected for sake of right to data portability to competitors... Beyond the technical and financial issues in order to maintain such data in "portable" format, there are principles and enforcement of fair competition at stake here.