

RETHINKING THE ONE-STOP-SHOP MECHANISM: LEGAL CERTAINTY AND LEGITIMATE EXPECTATION*

ABSTRACT

This paper aims to provide a contribution to the discussion concerning the one-stop-shop mechanism proposed in the General Data Protection Regulation. The choice of the instrument of regulation in itself is an unmistakable indication in this regard. Hence, unification and simplification (together with respect to data subjects' interests) shall be the guideline of every legal discussion. The one-stop-shop mechanism (hereinafter "OSS") clearly reflects the unification and simplification goals of the reform. We believe that the OSS is logically connected with the idea of one Data Protection Authority ("DPA") enjoying exclusive jurisdiction and that this can only mean that, given one controller, no other DPA can be considered competent¹. In other words, the implication of the OSS represents a competence regarding everything that concerns a given controller. In our analysis, we argue that such architecture: a) can be made coherent with the consistency mechanism; b) guarantees the data subject providing them with a clear allocation of powers (legal certainty); and c) is not at odds with the complaint lodging procedure. Our position on fundamental questions follows. What is the perimeter of competence of the DPA in charge? We believe that it should be competent on every issue concerning the controller, including the issuing of fines. How can we reconcile the dominant role of one DPA with the principle of co-operation among DPAs? We do not consider co-operation to be at odds with the rule that decisions are taken by a one single entity. Finally, we share some suggestions on how to make the jurisdiction allocation mechanism (the main establishment criterion) more straightforward.

Keywords: (General Data Protection Regulation, one-stop-shop, competence, main establishment, consistency procedure, complaint lodging procedure, legal certainty, legitimate expectation)

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** This paper has been written in the middle of the data protection reform. Amendments proposed by Rapporteurs have come one after the other. On 21 October 2013, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament adopted a new version of the GDPR. The authors have decided to focus their analysis on the version of the General Data Protection Regulation published by the EU Commission on 25 January 2012.*

¹ In this paper "competence" and "jurisdiction" are used as synonyms.