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## **EUROPEAN BANKING FEDERATION'S COMMENTS TO THE WORKING PARTY 29 GUIDELINES ON LEAD SUPERVISORY IDENTIFICATION ONE STOP SHOP**

The European Banking Federation (EBF) welcomes the possibility given to provide comments on the Guidelines prepared by the Article 29 Data Protection working party on the lead supervisory identification - one stop shop.

### **Cross-border processing of personal data**

Regarding the second-last paragraph of A of I – "Cross-border processing of personal data" and the factors listed concerning the potential impact of processing to help the Supervisory Authorities to interpret 'substantially affects' on a case by case basis, the EBF would welcome further clarifications regarding the meaning of "change their behaviour in a significant way" and "wide range of personal data".

### **Lead supervisory authority**

As currently recognised by the Article 29 Data Protection Working Party (Article 29 WP) guidelines "*There will be borderline and complex situations where it is difficult to identify the main establishment or to determine where decisions about data processing are taken.*

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*This might be the case where there is cross-border processing activity and the controller is established in several Member States, but there is no central administration in the EU and none of the EU establishments are taking decisions about the processing (i.e. decisions are taken exclusively outside of the EU)."*

We believe that for companies' part of a group, the principle of "one stop shop" as presented in the guidelines is likely to result in a stalemate in practice considering that as by way of derogation to the "one stop shop" principle, the General Data Protection Regulation (GDPR) allows a non-lead Supervisory Authority to act as a lead Supervisory Authority when handling local cases.<sup>1</sup> It applies the same way when the controller or processor has an establishment on the territory of their Member State, because data subjects residing on their territory are substantially affected, or because a complaint has been lodged with them (see recital 124)

It remains unclear whether the lead supervisory authority is the exclusive point of contact for the data controller for all matters concerning the respective cross-border processing activity or whether the lead supervisory authority will be involved only via the other supervisory authorities. In our views, the lead supervisory authority should be involved via other local supervisory authorities.

Based on the framework described in the Guidelines, it seems that there will be many cases of overlapping responsibilities that will have to be solved through cooperation between the supervisory authorities.

This can imply:

- A close cooperation among Data Protection Officers in every Member States where the organization is based, in order to enable the respective authorities involved to have an entry point in the company or a partner to turn to;
- Further clarifications regarding the role of the lead Supervisory Authority of the Member State in which the central administration of the holding is based (also considering the "role of coordinator" that the holding plays) as well as a clarification on the scope of actions of other interested Supervisory Authorities which will manage local cases and could substitute the lead Supervisory Authority;
- Further clarifications should be also welcome regarding the sanctions.

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<sup>1</sup> Recital 127 : "Each supervisory authority not acting as the lead supervisory authority should be competent to handle local cases where the controller or processor is established in more than one Member State, but the subject matter of the specific processing concerns only processing carried out in a single Member State and involves only data subjects in that single Member State (...)"

## About EBF

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 4,500 banks - large and small, wholesale and retail, local and international - employing about 2.1 million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that securely handle more than 300 million payment transactions per day. Launched in 1960, the EBF is committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth.

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