

## Propositions regarding the European Data Protection Board Internal Structure

Following its opinion on “Core topics in view of the trilogue”, adopted on 17 June 2015, the Article 29 Working Party (hereinafter: the Working Party) wishes to express a position on the internal structure of the future European Data Protection Board (hereinafter: the EDPB). As a preliminary remark, these propositions are intended to facilitate the discussions in the trilogue, bearing in mind that some of the propositions will need to be specified in the future rules of procedure of the EDPB.

In fact, the Working Party is convinced that a workable governance structure is the key factor to give full efficiency to the new data protection regime. At the same time the Working Party is aware of the fact that the EDPB should remain lean and flexible in order to foster its responsiveness. In other words, a balanced structure built from the decentralized network of independent supervisory authorities whose coordination is facilitated by the Board and its Chair rather than a top down centralized structure.

As stated in its previous opinions, the Working Party is in favor of a strong and independent EDPB. Independency must be an essential characteristic of this new governance model. Moreover, the necessity for the EDBP to take binding decisions implies that it should be given legal personality. Accordingly, the Working Party supports the version of the Council of the European Union (hereinafter: the Council) which expressly recognizes this feature in its Article 64: “*the European Data Protection Board is hereby established as body of the Union and shall have legal personality*”.

### 1- The EDPB

The EDPB is at the center of the new governance model and should act as the key decision-making body.

From an organizational point of view, the Working Party is of the view that the Board should be composed of its chair, one head of the supervisory authority in each Member State or his or her representative<sup>1</sup> and the EDPS.

In its various tasks, and as it is the case today, it should rely on working groups composed of staff members from supervisory authorities and the permanent staff of the Board’s secretariat.

### 2- The Chair

As the EDPB representative, the Chair should express the voice of the European supervisory authorities and should be mandated by the EDPB to do so.

The Working Party considers that the Chair should be elected from amongst the members of the EDPB. He or she should have a mandate of several years (3 or 4 years), potentially renewable and offering him or her sufficient time to efficiently fulfill his or her mandate. The Chair should be accountable to the EDPB and can be removed following a vote of no confidence by the Board. His or her role should be to ensure the timely performance of the tasks of the EDPB and that it remains efficiently and collectively managed.

The Working Party considers that the Regulation is an historical chance to have a strong representation of national supervisory authorities collectively before the EU institutions and

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<sup>1</sup> or a joint representative when in a Member State more than one supervisory authority is responsible for monitoring of the Regulation

with regard to other stakeholders (e.g. civil society, industry...). In order to give full effect to this representative role and considering his or her moderation function, the Chair should not, as a rule, have voting rights.

Moreover, alike the EU Parliament's proposal for Article 69(2a), the Working Party is of the opinion that the Chair should be a full time position to be performed at EU level. The broad responsibility of the EDPB and its independence imply that the position of Chair should not be performed at the same time with any data protection function at national or EU level.

In order to ensure its full independency, the EDPB should be accountable, through its Chair, for its own budget. In that regard, the Chair should have a central role on and control of the EDPB budget and of its staff.

### **3- The Executive Committee**

To fulfill his or her mandate, the Chair should be helped by two deputy chairpersons to be elected from the members of the EDPB and who must be entrusted with specific tasks. They must also serve as a sounding board to the Chair. The Chair, together with the two deputy chairpersons will form the Executive Committee of the EDPB.

The Executive Committee should ensure the efficient performance of the EDPB tasks under the mandate given by the EDPB members. In particular, the Executive Committee will support the Chair and ensure that he or she is strongly connected with the EDPB and with the practice of supervisory authorities.

The internal rules of the EDPB will provide the requirements relating to the scope of responsibility of the Executive Committee and the relationships between the Chair, the two deputy chairpersons and with the EDPB.

### **4- Secretariat**

The tasks of the EDPB will require much more work, resources and competencies than the current Article 29 Working Party. Therefore, the EDPB must rely on a professional, dedicated and adequately staffed Secretariat to efficiently fulfill its mandate. An impact assessment should be made in order to evaluate precisely the resources needed.

The Secretariat should be under the responsibility of the EDPB, via its Chair. If a head of secretariat is needed to run the office on a daily basis, the Chair should have a central role in his or her designation.

As the Secretariat is likely to be provided by the EDPS, it must be organized on the basis of mutual trust and on the basis of a clear separation of roles and responsibilities to be clearly set out in a Memorandum of Understanding.

In this respect, the Working Party supports in general recital 110a and Article 71 of the Council proposal and would recommend more specifically replacing the term "Code of Conduct" by "Memorandum of Understanding".