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European Data Protection Board

Online transmission

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re: Guidelines 08/2022 under targeted public consultation

Dear Sirs,

According to section 2.1.3 the notion of main establishment of the GDPR is linked to a single data controller and cannot be extended to a situation of joint controllership. Each joint controller may have its own main establishment, but it cannot be considered as the joint controller's main establishment with regard to the processing carried out under their joint control. Therefore, the joint controllers cannot designate a common main establishment for both (guidelines 08/2022, para. 34).

At present, it is not clear whether it leads to the conclusion that the one-stop shop mechanism is not applicable in the hypothesis of cross-border processing in joint controllership - as there would be no single main establishment - or leads to the belief that in such cases there will be more lead authorities, as many as the main establishments of each of the joint controllers. The latter solution, although it would conflict with the principle of a single lead authority regarding the same cross-border processing, seems to be the one inferable from the specification of the points ii. and iii. of paragraph 2.d of the Annex.

If this last interpretation is the thesis of the EDPB, to avoid uncertainties, it is suggested to specify that in these circumstances there will be several lead authorities, each identified in relation to the main establishment of each of the joint controllers.

Sincerely Yours



Avv. Rosario Imperiali d'Afflitto