

ICC POLICY POSITION ON THE ONE-STOP-SHOP MECHANISM

POLICY STATEMENT

Prepared by the ICC Commission on the Digital Economy

Summary and highlights

This policy statement:

- Outlines position of the International Chamber of Commerce (ICC) on the one-stop-shop mechanism, as agreed on during the legislative co-decision procedure in the European Union (EU) institutions
- Highlights the importance of the one-stop-shop for the EU and global industry, and emphasizes that such a mechanism should be governed by streamlined, non-bureaucratic rules.
- Explains that complex and time-consuming administrative requirements would compromise the goals of a one-stop-shop, negatively affecting large companies and small and medium-sized enterprises

Summary

This policy statement outlines the position of the International Chamber of Commerce (ICC) on the one-stop-shop mechanism as agreed on during the legislative co-decision procedure in the European Union (EU) institutions. It highlights the importance of the one-stop-shop for the EU and global industry, and emphasizes that such a mechanism should be governed by streamlined, non-bureaucratic rules. It further explains that complex and time-consuming administrative requirements would compromise the goals of a one-stop-shop, negatively affecting large companies and small and medium-sized enterprises. Finally, it urges that the one-stop-shop should enable EU citizens to turn to their local authorities for resolution of complaints, but that the processes among local Data Protection Authorities (DPAs) to provide such recourse should be harmonized so as not to add unnecessary bureaucracy that would cost time and resources.

Introduction

The one-stop-shop mechanism was introduced by the European Commission (the “Commission”) in the proposal for the General Data Protection Regulation¹ (“GDPR”). It is intended to clarify and simplify the compliance requirements placed on global companies that process data in several EU member states. It would allow such companies to liaise with one, lead national Data Protection Authority (the “DPA”), which would review their data protection practices and enforce the obligations set by the GDPR. The ultimate goal of such an approach is to encourage the growth of a single digital market in Europe.

Under existing law, global companies must consult with the DPA in each member state where a company processes personal data. In practice this means that one company may need to work with twenty-eight national DPAs. Not only is this system time consuming and costly for companies; often national DPAs set different standards for how requirements should be met.

The current national laws of the EU member states are designed to give effect to the Data Protection Directive.² While the Directive sets minimum standards for personal data processing, EU Member States may set the bar higher. In contrast, the GDPR would create one directly applicable data protection law that would apply uniformly across the entire EU. The proposed GDPR would harmonize rules and standards, thereby streamlining administrative requirements and clarifying the nature and scope of a company’s legal obligations. Enabling companies to work with a single DPA would further reduce bureaucratic requirements and provide greater legal certainty for companies.

ICC urges adoption of a meaningful one-stop-shop mechanism that would allow companies to work with a single privacy regulator. Such an approach must be designed to streamline administrative requirements and provide predictability and legal clarity for all companies working to comply with European law.

As originally envisioned, a one-stop-shop would promote consistent application of the GDPR throughout the EU. In doing so, it would foster a more certain legal environment for companies and better safeguard citizens’ fundamental rights and freedoms. A lead DPA would evaluate and monitor

¹ REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) of January 25, 2015, available at http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf.

² Directive 95/45/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, published at the *Official Journal L 281*, 23/11/1995 P. 0031 – 0050, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>.

the data protection practices of a company. This approach would allow companies to deal with a single privacy regulator regardless of how many member states they operate in. It would also enable companies to respond to a single decision and be subject to a single enforcement action when appropriate. Such a system is important not only to large companies who do business across Europe, but for European small and medium-sized enterprises that need workable, affordable administrative procedures and judicial review.

ICC is concerned that as policymakers continue to consider the one-stop-shop, proposed alternatives to this original design would operate counter to the goals of certainty and simplicity. While we recognize and respect the interests of member state authorities in protecting their citizens, we are concerned that emerging proposals would introduce complexity and bureaucracy to the one-stop-shop. Of particular concern are instances of cross-border complaints, for which emerging proposals would require the coordinated consultation of a large number of DPAs.

We recommend avoiding complicating the one-stop-shop in ways that would bring legal uncertainty to companies and citizens. Doing so would compromise the goal of the one-stop-shop to promote the digital single market.

ICC encourages establishing clear guidance about which authority can serve as a “lead DPA.”

As originally envisioned, the “one-stop-shop” provided that the DPA in the jurisdiction where a company has its “main establishment” would be responsible for oversight of that company’s data processing activities, irrespective of where the processing takes place.

To further the goal of legal clarity and to enable companies to comply efficiently with the requirements of the regulation, it will be important to establish guidance about what constitutes a “main establishment”. Any such criteria should be applicable for both controllers and processors.

Over the course of the legislative process, various criteria for determining “main establishment” have been proposed, including the location where the main decisions are taken with regard to the conditions and means of the processing. Considerations that would support this decision include the organization’s headquarters; the location which is best situated in terms of management functions and administrative responsibilities to enforce data protection rules; and the location of effective management activities. It has also been suggested that where uncertainty remains, the European Data Protection Supervisor would step in to make a final determination.

ICC believes that for the one-stop-shop to work effectively, the regulation will need to include practical, clear, unambiguous criteria to assist companies in determining the location of their main establishment. Such guidance will help companies by providing them with more certainty, and will avoid undue burden on regulators by reducing the instances in which they will need to resolve questions about the location of an organization’s main establishment.

ICC believes that EU citizens should be able to seek recourse through their local authority, and that coordination between local authorities and lead DPAs to resolve complaints should be efficient and streamlined.

ICC recognizes the interest of DPAs in safeguarding the rights and interests of citizens in the protection of their data. It also acknowledges that individuals should be empowered to lodge complaints and resolve concerns about possible misuse of data using mechanisms that are easily available and deliver prompt, timely responses. By making redress available locally, individuals can work with authorities in their own language, using familiar procedures, either online or at nearby venues. Local data authorities would assume responsibility for working with the lead DPA.

It will be important, however, to ensure that this process works in a coordinated way that minimizes administrative burdens for individuals, companies and authorities alike. Processes should be transparent and designed to deliver a response to individuals in a timely manner. They should involve only essential paperwork, and promote streamlined coordination between relevant authorities based on clearly understood procedural requirements.

Conclusion

ICC is encouraged by the one-stop-shop provision currently under consideration as part of the proposed General Data Protection Regulation. We believe that the adoption of a streamlined, harmonized one-stop-shop mechanism would yield important benefits for all stakeholders – businesses, individuals and data authorities – and will contribute to the ultimate goal of the proposed Regulation of promoting the development of a single digital market in the EU. ICC is available to work with policymakers as it continues to define the contours and details of a practical, optimally effective one-stop-shop mechanism.



The International Chamber of Commerce (ICC)

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With interests spanning every sector of private enterprise, ICC's global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries. ICC members work through national committees in their countries to address business concerns and convey ICC views to their respective governments.

ICC conveys international business views and priorities through active engagement with the United Nations, the World Trade Organization, the G20 and other intergovernmental forums.

Close to 3,000 experts drawn from ICC member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

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