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## General Data Protection Regulation – procedural rules on enforcement

here: **Position Paper of VATM e.V. Germany** (does not include business and trade secrets)

We hereby submit the views of VATM and our member companies with regard to the Call for Inputs on the procedural rules on enforcement established by Art. 60 and 65 of *Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation*, in the following, GDPR).

VATM welcomes the public consultation as we see a clear need of harmonisation and more consistent application of the set of rules related to enforcement on a Member State level and the need of better cooperation in the context of the actions of national data protection supervisory authorities when dealing with cross-border cases.

VATM takes note that the European Commission (in the following, the Commission) has already taken steps towards the improvement of the regulatory environment associated with Art. 60 GDPR by adopting *Guidelines 02/2022 on the application of Article 60 GDPR in March 2022*<sup>1</sup> (in the following, the Guidelines). As the Guidelines have been a decisive first step towards harmonisation on a Member State level, we would like to urge the Commission to reflect on the implementation of the Guidelines in the single Member States. As of today, the Guidelines have not been implemented by all national data protection supervisory authorities, which continues to create legal uncertainty favouring large international companies as well as some

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<sup>1</sup> EUROPEAN DATA PROTECTION BOARD (2022): *Guidelines 02/2022 on the application of Article 60 GDPR* (available: [https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-022022-application-article-60-gdpr\\_en](https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-022022-application-article-60-gdpr_en) (last accessed on 20.03.2023).

Member countries. This creates a natural predisposition towards a straightforward forum shopping for these companies active in more than one country in the EU. Given the way GDPR and the Guidelines have been implemented or the lack of implementation thereof, we urge the Commission to adopt measures preventing any such practices in the future, setting a stable regulatory environment, which serves equally to all companies active in the EU and provides for a level playing field by also sufficiently protecting the rights and the interests of the EU citizens. Therefore, a mechanism securing the compliance with the Guidelines set by the Commission must be put in place.

With regard to the concrete provisions subject of the current consultation, VATM would like to emphasize the need to focus on further clarification of Art. 60 (3) GDPR, which provides for communication and exchange of information between the supervisory authorities “*without delay*”. In this context, Recital 13 GDPR emphasizes the role of the Regulation as essential in order to “*prevent divergences hampering the free movement of personal data within the internal market*” and to “*ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective cooperation between the supervisory authorities of different Member States*”. Therefore, the GDPR recognises the importance of a unified and stable regulatory framework across the Union with a particular emphasis on the cooperation between the supervisory authorities. The current divergencies between the practices of the different national supervisory authorities, in particular the means and the speed of communication and cooperation between them, provide for the opposite of the intention expressed in Recital 13. Therefore, VATM finds the procedures currently in place, the scattered approaches used by the supervisory authorities in the different Member States and their lack of cooperation as a clear bottleneck for the successful functioning of the many smaller companies operating across the Union. We would like to point out that without a sufficient guidance on behalf of the Commission with regard to the intention set by Recital 13 and the rule established by Art. 60 (3) they would not be enforceable in a consistent manner. Furthermore, Art. 60 (3) GDPR lays the ground for any timely and effective implementation of draft decisions in the context of GDPR, so we see the lack of enforcement thereof as harmful for all individuals and companies in the Union. **Thus, we would like to urge the Commission to address the current lack of clarity and synchronisation and implement procedural rules informing the process of requesting and delivering information between the authorities as well as set clear deadlines for fulfilling their obligations.** It is VATM’s view that only effective and

transparent cooperation across the EU would solve the present issues, address the forum shopping concerns, and ensure timely draft decisions.

In addition, VATM sees the need for better structuring of the provisions set by Art 60 GDPR going into more detail of the steps related to lodging a complaint. **A unified and standardised approach** for lodging a complaint across the Member States and **for clearly establishing the role of the complainant in the procedure** covered by Art 60 (7), (8), (9) in relation to Art. 77 GDPR is necessary in order to address the present divergencies. A standardised procedure on an EU level would address the current loopholes in the implementation of the GDPR on a Member State level and prevent large international companies to take advantage of them. Furthermore, it would enable national supervisory authorities to better examine individual cases relying on more transparent procedural rules and easier referrals between similar complaints.

To conclude, VATM recognises the need of intervention regarding the procedural rules on enforcement with a particular focus on Art. 60 GDPR. In its current form, this provision is not sufficient to address the regulatory uncertainty and the resulting procedural loopholes related to it. We, therefore, urge the Commission to take note of our comments in order to secure a better regulatory environment for all individuals and companies in the EU.