

## ANNEX PCAOB Questionnaire

### Addressees of the Questionnaire:

Member States' national public oversight bodies

### Purpose of the questionnaire:

Prepare discussion on follow-up of the recommendations in the letter of the WP 29 of 13 December 2011 to the Commission (DG MARKT).

Gather more precise facts on the current state of data transfers, agreements and statements of protocol concluded between the PCAOB and the corresponding authorities in the different member states, as well as the relevant content of these agreements for data protection.

### Questions

1. Did the audit oversight authority of your country sign an agreement with the PCAOB on the exchange of audit information, including the exchange of audit working papers?
  - a. If yes, can you provide us with a copy?
  - b. If yes, is this agreement, or at least are its provisions on the transfer of personal data, binding on the PCAOB?
  - c. If no, what are the expectations (current state of negotiations ...), what is the current state for negotiation in respect of the transfer of personal data (template of PCAOB or use of agreement another member state...).
  - d. If no and there is a delay in the negotiation process vis-à-vis the PCAOB, is it the wish of the audit oversight authority or another authority of your country to receive harmonised data protection guidance at EU level before July 2013?
  - e. If there is a wish for harmonisation via common guidance by the EU DPA's (WP29), what would be the preferred form of guidance in order to conclude new or amend existing arrangements with the PCAOB:
    - (1) an upgraded version of the EGAOB model MOU made in cooperation with the data protection authorities (WP 29); and/or
    - (2) a note from the working party 29 that provides more specific guidance on remaining gaps in protection of existing arrangements with PCAOB, a full "benchmark" list of required topics/principles to be covered and model clauses per topic/principles
    - (3) practical assistance of representatives of the WP 29 at EGAOB meetings to discuss the content of arrangements with the PCAOB?
    - (4) other?

2. Did you perform a proper data protection impact assessment during the negotiations with the PCAOB<sup>1</sup> by
  - a. contacting your national DPA for further information
  - b. your own assessment (please explain what guidance you used such as internal guidance by in-house or external counsel (law office), public opinion of your national data protection authority or other means.

Thank you for also to providing us with a copy or summary of the content of this guidance to be able to check at least the summary of the data protection impact assessment.

- c. other (please explain)
3. DG MARKT informed WP 29 that Member States' ministries and their regulators were informed of the letter of the WP 29 and its recommendations.
  - a. What measures are currently concluded or proposed (or developed in the negotiations) in order to ensure data protection in accordance with national and EU data protection law, taking into account in particular the model MoU of the EGAOB ?

- legal basis (applicability of EU and national data protection law)
- identification of scope (data to be exchanged)<sup>2</sup>
- binding character (or not?) of the arrangement, protocol,...
- data quality
- proportionality (necessity, filter mechanisms, balanced bilateral exchange mechanisms...)<sup>3</sup>
- data retention
- security and confidentiality measures
- purpose definition
- purpose limitation<sup>4</sup>
- transparency vis-à-vis data subjects (by whom)
- rights of data subjects (access, rectification and right to object under articles 12-14 Directive 95/46/EC)
- guarantees regarding onward transfers from a European competent authority to SEC, such as conditions for such transfers imposed on PCAOB, including but not limited to the previous written consent or the previous notification from the EU requested party.
- guarantees regarding sensitive data<sup>5</sup>
- other guarantees made available to the data subjects,
- accountability<sup>6</sup>
- judicial redress mechanisms for data subjects

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<sup>1</sup> See Recommendation n° 4.

<sup>2</sup> Article 8 ECHR

<sup>3</sup> See Recommendations n° 2, 3, 6 and 7.

<sup>4</sup> See Recommendation n° 5

<sup>5</sup> See Recommendations n° 2 and 5

<sup>6</sup> See recommendation n° 7

- b. Do you believe the above measures to be compliant with your national data protection law and Directive 95/46/EC?
  - c. How is exchange of information carried out in practice? Please describe whether any technique is applied, and what it means in practice (previous filtering, anonymisation...)
4. We expect that different future factors may have an impact on the relevant arrangements with the PCAOB. For instance, it is expected that the European Commission will work closely with the European Parliament and the Council to ensure an agreement on the new EU data protection framework by the end of 2012<sup>7</sup>, and this reform will have an impact on the obligations of the data controllers in the EU. One of the main aims of this reform is the aim to provide more coherent approach in data protection than possible under Directive 95/46/EC. Other factors concern the deadline of the audit adequacy decision (in July 2013<sup>8</sup>) and the objective of trying to reach more harmonisation at EU level in the arrangements with the PCAOB.
- a. Is there a sunset clause<sup>9</sup> / termination clause in the arrangements with the PCAOB to terminate the agreement in case one of the following events happen: entry into force of the data protection regulation, end of term of the adequacy decision with the US (in July 2013), entry into force of another harmonisation regulatory action at EU level and/or other?
  - b. Do you plan or would you welcome any actions of harmonisation vis-à-vis the approaches in other member states and in other precedents and sectors?<sup>10</sup> If so, please specify the preferred approach such as: application of procedure in article 218 EU Treaty (Commission submits recommendation to Council to open negotiation with consultation of WP 29), or informal approach via EGAOB ...)
  - c. Do you intend to plan any follow-up action in the coming years to take into account the expected changes in the new EU data protection framework?

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<sup>7</sup> Conclusion of the Communication from the Commission of 25 January 2012 COM (2012) 9 final, published on [http://ec.europa.eu/justice/data-protection/document/review2012/com\\_2012\\_9\\_en.pdf](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_9_en.pdf)

<sup>8</sup> Commission Decision 2010/485/EU of 1 September 2010

<sup>9</sup> A sunset provision or clause is a measure within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law. Most laws do not have sunset clauses and therefore remain in force indefinitely

<sup>10</sup> See Recommendations n° 8 and 9 (reference to PNR, TFTP2 agreements,...)