

IDPAs

Intra-Group Data Processing Agreements

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Challenges and options for international groups

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The challenge

The reality:

- International groups of companies
- Multiple data flows, over the border, in different roles
- Shared services, external providers (HR mgmt, CRM, procurement etc.)
- Varying levels of maturity and compliance
- GDPR implementation program ongoing
- Records of processing activities partially completed and partially accurate
- Cross-border transfers not centrally managed and only partially lawful
- C2P agreements for key relationships (external and internal)
- JC not assessed and managed

The law:

- Cross-border transfers are restricted – require safeguards
- Outsourcing requires C2P agreements
- C2C may require safeguards
- JCs need to enter into JC arrangements
- Accountability requires documentation
- etc.

Options for IDPAs

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Options for improving compliance

– **Cross-border transfers:**

- Rely on exemptions (article 49 GDPR)
- Use Standard Contractual Clauses (SCCs) on a case-by-case basis
- Use ad-hoc clauses on an case-by-case basis (requires approval)
- Establish BCR (has broader scope and requires approval from the supervisory authority and the EDPB)
- *Use SCCs as part of a group-wide framework agreement (cf. Recital 109)*

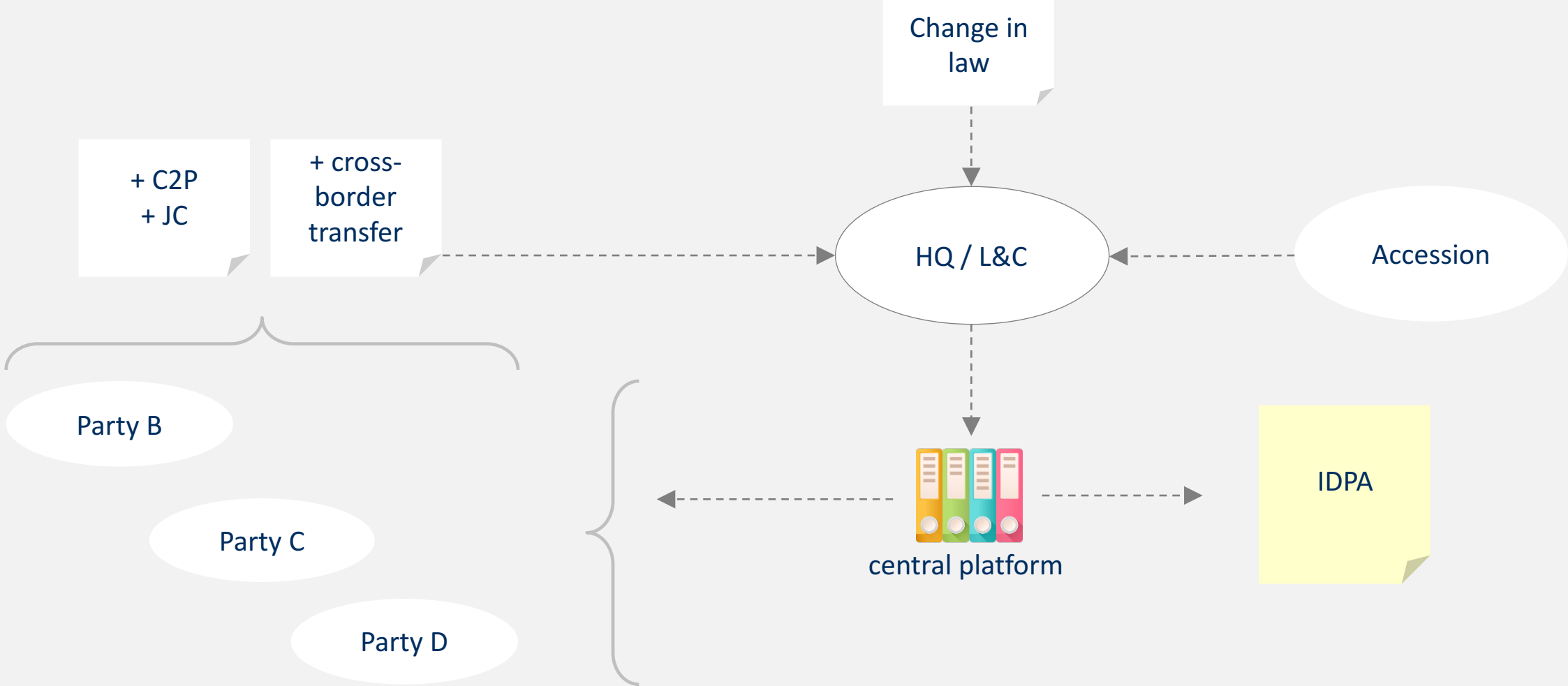
– **C2C, JC, C2P:**

- Use C2P and JC agreements on a case-by-case basis
- *Agree on group-wide standard terms for C2P and JC transfers*

Requirements for IDPAs

- Be broad enough to cover most data flows →
 - Provisions for C2C and C2P cross-border transfers
 - C2P and JC terms optional
- Be specific enough to be effective and enable documentation and accountability →
 - Document individual data flows (accountability)
- Be flexible enough to accommodate changes →
 - One company to manage data flows, accession and changes to the IDPA

Managing companies and data flows



Options for IDTAs

- S** – Permit transfers to third countries (“IGDTA”)

- M** – Establish agreements w/ processors (C2P)
– Establish joint controller arrangements (JC)

- L** – Establish a baseline for data protection
– Strengthen legitimate interest
– Provide safeguards for controller transfers (C2C)

- XL** – Appoint EU and CH representatives
– Establish confidentiality for non-personal data

IDPAs: a closer look

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IGDAs as framework agreements

Framework:

- Scope, interpretation, order of precedence
- General principles of data processing
- Cross-border transfers
- C2C, JC, C2P
- Accession
- Term and termination
- Miscellaneous

Annexes:

- JC and C2P terms
- SCCs
- Accession form
- Country-specific terms
- etc.

Structure of IGDTAs

Framework Agreement

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Annexes

Recommendations for IDPAs

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Lessons learned

- Don't over-engineer – complexity should be proportional to maturity
- Don't over-comply, and don't solve all legal issues
- Don't include terms you know will not be complied with
- Make managing the IDPA and data flows as simple as possible
- Be prepared to actively manage relationships between group companies

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