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**DATA PROTECTION  
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# STRATEGIC FORUM SHOPPING FOR CONTROLLERS UNDER THE GDPR

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# TOPICS

- Why the forum matters
- Shopping for a DPA - 3 case studies
- Shopping for national court jurisdiction



# WHY THE FORUM MATTERS

- 1 forum is better than 28 fora
- Enforcement
  - resources & practices will differ
- Applicable national law
  - GDPR contains 69 opening clauses but no rules on conflicts of laws
  - Forum will likely determine applicable national law



# SHOPPING FOR A DPA - MAKING ONE-STOP-SHOP WORK FOR YOU

- Without One-Stop-Shop: 28 DPAs potentially competent
- Where does the One-Stop-Shop apply?
  - “cross-border processing” = processing in the context of the activities of
    - establishments in multiple Member States or
    - a single EU establishment + likely to substantially affect data subjects in multiple Member States
  - DPA of “single” or “main” establishment is lead DPA



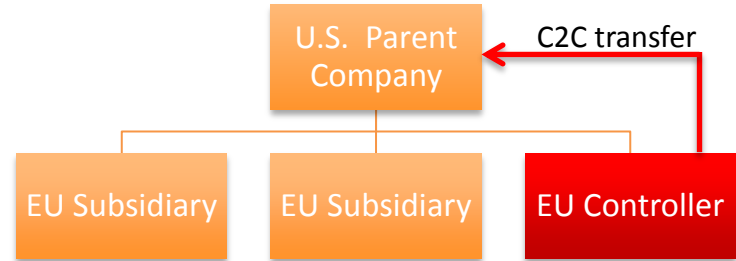
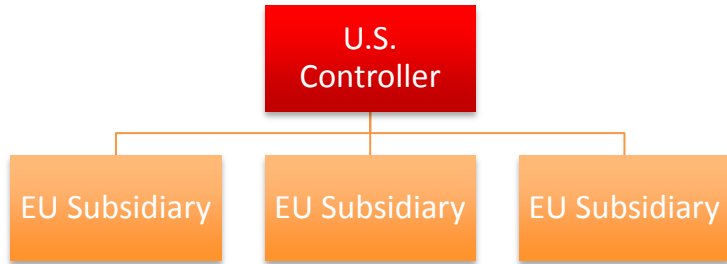
# SHOPPING FOR A DPA - SINGLE/MAIN ESTABLISHMENT

- “Establishment” includes branches and subsidiaries (ECJ C-131/12 - Google Spain)
- “Single establishment” (in the EU)
  - Controller has no branches or subsidiaries
- “Main establishment” (in the EU)
  - place of controller’s central administration, unless
  - decisions on purposes & means taken in another EU establishment which has power to implement such decisions



# SHOPPING FOR A DPA - ENGINEERING A “SINGLE ESTABLISHMENT”

Case Study 1: International manufacturer of smart devices



- No single/main EU establishment
- 1SS does not apply
- 28 DPAs can enforce

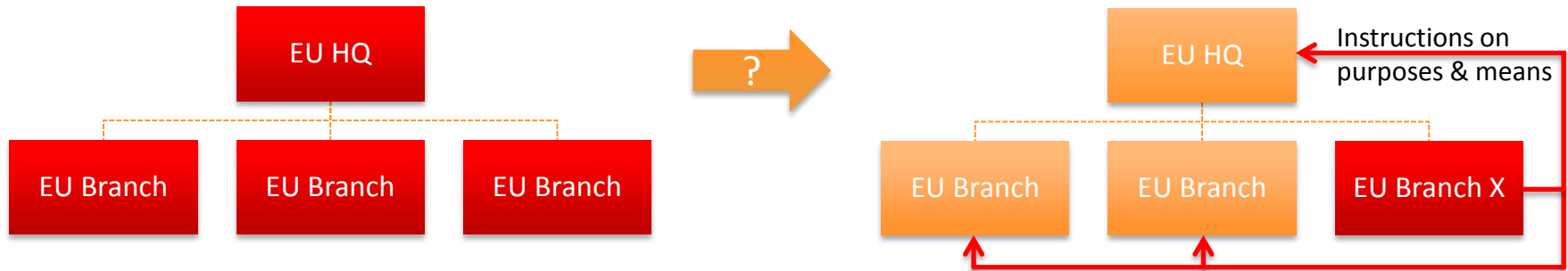
- Single EU establishment in forum of your choice
- Authority to implement decisions + sufficient assets
- 1 lead DPA

#DPI17



# SHOPPING FOR A DPA - ENGINEERING A “MAIN ESTABLISHMENT”

Case Study 2: Digital marketing at financial institution with branch structure



- Establishments in multiple MS: 1SS
- Each establishment determines its own processing purposes:  
4 main establishments
- 4 lead DPAs (1 for each branch + HQ)

- Decisions on purposes and means are taken in Branch X
- Best implemented using single software system
- 1 lead DPA

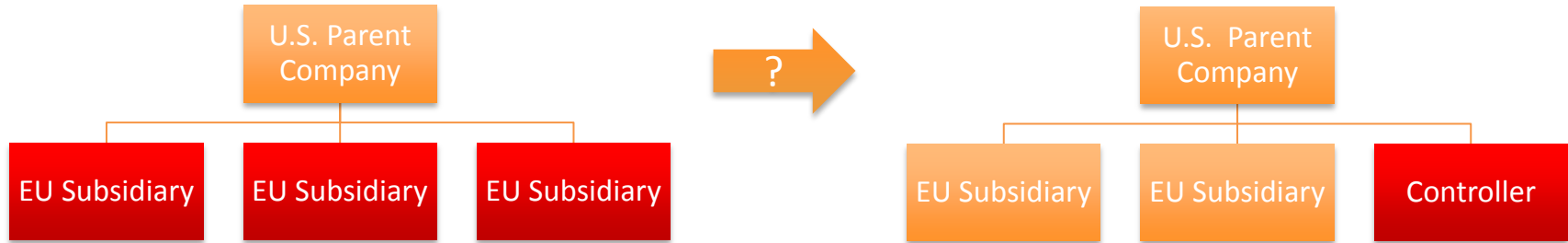
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# SHOPPING FOR A DPA - CENTRALIZING THE CONTROLLER ROLE

## Case Study 3: Local internal compliance investigations



- Investigations done locally: no cross-border processing → no 1SS
- 3 lead DPAs (1 for each subsidiary)
- 3 applicable laws on processing crime-related data (Article 10 GDPR)

- Controller has “single establishment” + substantially effects employees in multiple Member States
- 1 lead DPA
- 1 applicable law

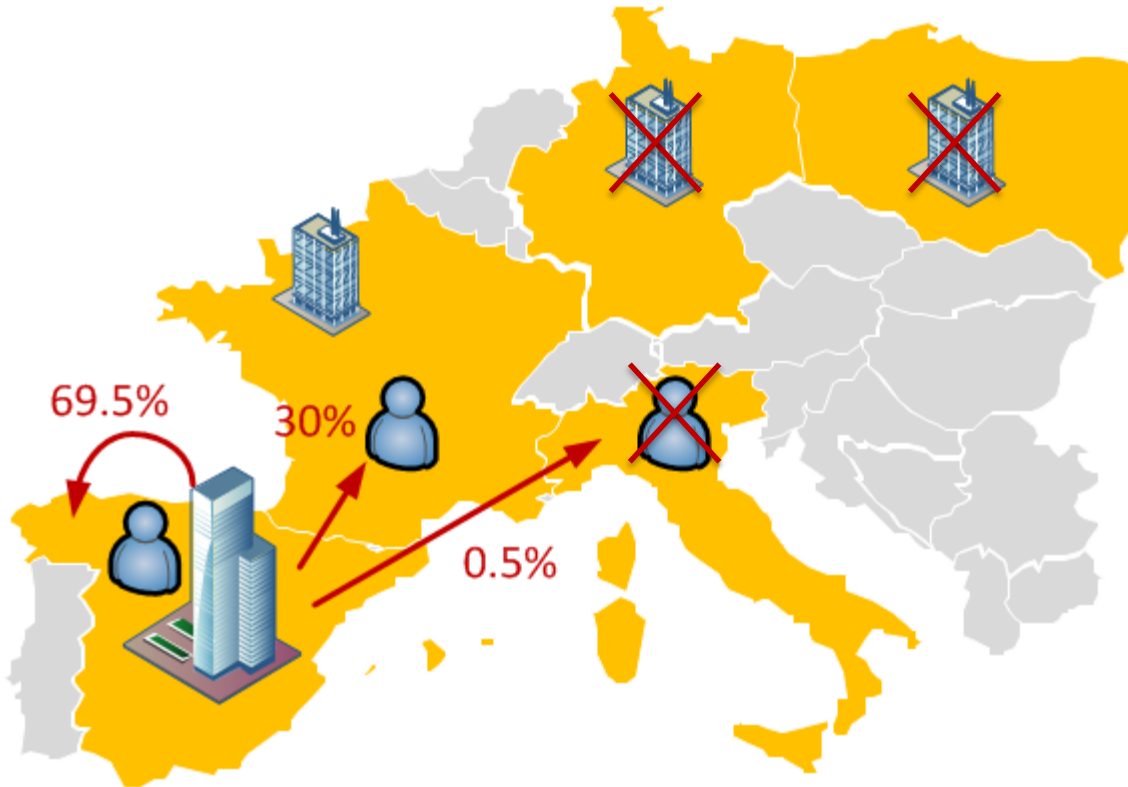
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# SHOPPING FOR COURT JURISDICTION

- Controller can be sued where
  - it has an establishment (including a subsidiary) or
  - the plaintiff (data subject) has his/her place of habitual residence (Article 79(2) GDPR)
- Why court jurisdiction matters
  - Practice on awarding „immaterial damages“ will differ
  - Will likely determine applicable law: e.g., can data protection NGOs claim damages on behalf of data subjects?

# LIMITING EXPOSURE TO UNDESIRABLE COURT JURISDICTIONS



- Avoid subsidiaries in non-relevant jurisdictions
- Make conscious decision about whether to engage in particular market (more is not always better)



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