

72. Where a controller not established in the EU is subject to Article 3(2) or Article 3(3) GDPR and experiences a breach, it is therefore still bound by the notification obligations under Articles 33 and 34 GDPR. Article 27 GDPR requires a controller (and a processor) to designate a representative in the EU where Article 3(2) GDPR applies.

73. However, the mere presence of a representative in a Member State does not trigger the one-stop-shop system³⁶. For this reason, the breach will need to be notified to every single authority for which affected data subjects reside in their Member State. This notification shall be done in compliance with the mandate given by the controller to its representative and under the responsibility of the controller.

I assume, the one-stop-shop system is meant to be a privilege to EU members, and indeed it facilitates a notification due to a data breach, because the notifying party only has to send its notification to one authority. I assume, such authority notifies other authorities in EU member states as far as necessary due to the scope of the reported breach.

The one-stop-shop system bears the benefit of not running the risk to be charged with an administrative fine just because one EU member state has not been notified.

The one-stop-shop system bears the benefit to reach out to the data subjects in a uniform and timely manner in order to prevent miss use of the data concerned by the data breach.

The question is, why shouldn't the one-stop-shop system apply to representatives ?

To my understanding the main reason for notifying a data breach is, to notify the data subjects as prompt as possible. This target can be achieved by notifying just one authority and then the mechanisms of co-operation between the national authorities starts to work. I do not see a sensible reason, why a non-EU-based company should be treated differently, if the target is to protect EU data subjects.

In addition, I imagine what happens if the representative notifies late or the breach needs to be investigated. Would all national authorities start a process of investigation ? If yes, this would be a multiplying workload for both sides. Can this really be the target of the EU ? I believe, the national authorities have other work to do.