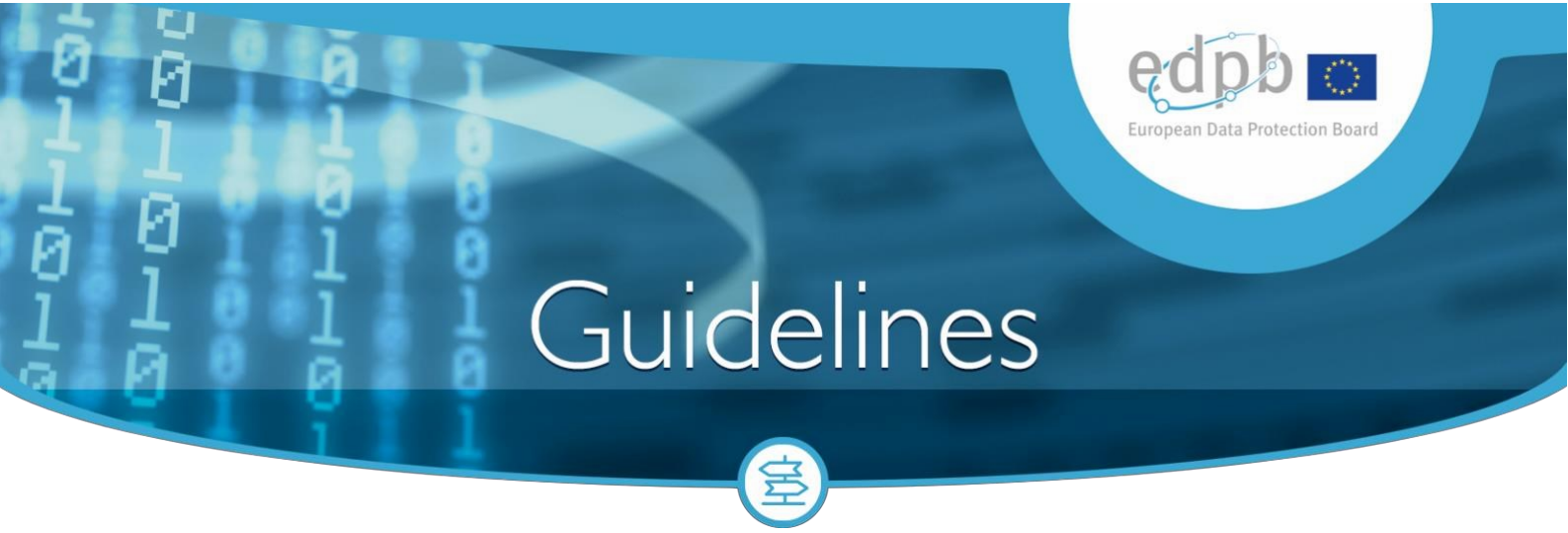

Guidelines 3/2018 on the territorial scope of the GDPR (Article3)

關於 GDPR（第 3 條）地域範圍之指引 3/2018

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Contents 目錄

The European Data Protection Board

Having regard to Article 70 (1)(e) of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing* of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

HAS ADOPTED THE FOLLOWING GUIDELINES:

歐洲個人資料保護委員會

依據歐洲議會與歐盟理事會於 2016 年 4 月 27 日通過歐盟規則 2016/679/EU 第 70 條第 1 項第 e 款，關於運用*個人資料時對自然人之保護與確保該資料之自由流通，以及指令 95/46 / EC 之廢除。

通過以下指引：

*譯註：我國個資法將個資之使用分為蒐集(collection)、處理(processing)、利用(use)等不同行為態樣，且有相應之適用要件，而 GDPR 對個資之蒐集、處理、利用任一行為，皆統稱為 processing。為與我國個資法中之「處理」有所區隔，本文因此將 GDPR 中的 processing 譯為「運用」，processor 譯為「受託運用者」

INTRODUCTION 導言

The territorial scope of General Data Protection Regulation[1] (the GDPR or the Regulation) is determined by Article 3 of the Regulation and represents a significant evolution of the EU data protection law compared to the framework defined by Directive 95/46/EC[2]. In part, the GDPR confirms choices made by the EU legislator and the Court of Justice of the European Union (CJEU) in the context of Directive 95/46/EC. However, important new elements have been introduced. Most importantly, the main objective of Article 4 of the Directive was to define which Member State's national law is applicable, whereas Article 3 of the GDPR defines the territorial scope of a directly applicable text. Moreover, while Article 4 of the Directive made reference to the 'use of equipment' in the Union's territory as a basis for bringing controllers who were "not established on Community territory" within the scope of EU data protection law, such a reference does not appear in Article 3 of the GDPR.

一般資料保護規則（GDPR 或本規則）[1] 第 3 條不只訂定了該規則的地域範圍，也顯示了自歐盟指令 95/46/EU[2] 以來，歐盟在個人資料保護法上的重大進展。某種程度上，GDPR 確認了歐盟立法者以及歐盟法院在指令 95/46/EU 中做出之選擇。然而，GDPR 也引進了重要的新要素。最重要的，指令第 4 條的主要目的是確定成員國的國家法律適用問題，而 GDPR 第 3 條則直接以適用的文字定義了地域範圍。此外，指令第 4 條將「設備的使用」作為「未設立於歐盟境內」之資料控管者適用歐盟個資保護法的依據。然而，此類規範並未出現在 GDPR 第 3 條中。

Article 3 of the GDPR reflects the legislator's intention to ensure comprehensive protection of the rights of data subjects in the EU and to establish, in terms of data protection requirement, a level playing field for companies active on the EU markets, in a context of worldwide data flows.

GDPR 第 3 條反映了立法者全面保護位於歐盟境內個資當事人權利之意圖，且在資料保護要件方面，基於全球性的資料傳輸環境，立法者欲為活躍於歐洲市場的公司建立一個公平競爭的環境。

Article 3 of the GDPR defines the territorial scope of the Regulation on the basis of two

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
2016年4月27日歐洲議會和理事會在個人資料運用上為保護自然人與確保該資料之自由流通，制定第2016/679號規則（EU），並廢除第95/46 / EC號指令（一般資料保護規則）。

[2] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
1995年10月24日歐洲議會和理事會在個人資料運用上為保護自然人與該資料之自由流通，制定第95/46 / EC號指令。

main criteria: the "establishment" criterion, as per Article 3(1), and the "targeting" criterion as per Article 3(2). Where one of these two criteria is met, the relevant provisions of the GDPR will apply to relevant processing of personal data by the controller or processor concerned. In addition, Article 3(3) confirms the application of the GDPR to the processing where Member State law applies by virtue of public international law.

GDPR 第 3 條根據兩項主要準則定義了該規則的地域範圍：第 3 條第 1 項的「據點」準則以及第 3 條第 2 項的「目標」準則。若資料控管者或資料受託運用者運用個人資料之行為符合前揭任一準則，GDPR 相關規定即適用於該行為。此外，第 3 條第 3 項確認了 GDPR 亦適用於當成員國法律依國際公法可得適用領域內所為之個人資料運用。

Through a common interpretation by data protection authorities in the EU, these guidelines seek to ensure a consistent application of the GDPR when assessing whether particular processing by a controller or a processor falls within the scope of the new EU legal framework. In these guidelines, the EDPB sets out and clarifies the criteria for determining the application of the territorial scope of the GDPR. Such a common interpretation is also essential for controllers and processors, both within and outside the EU, so that they may assess whether they need to comply with the GDPR for a given processing activity.

透過歐盟資料保護機關的統一解釋，在評估資料控管者或資料受託運用者運用個人資料之行為是否屬於新的歐盟法律架構範圍時，這些指引旨在確保 GDPR 適用的一致性。在指引中，歐洲個人資料保護委員會（EDPB）制定並闡明 GDPR 地域範圍適用之標準。位於歐盟內外之資料控管者和受託運用者可藉由這些統一的解釋，評估特定運用活動是否需要遵守 GDPR 的規範。

As controllers or processors not established in the EU but engaging in processing activities falling within Article 3(2) are required to designate a representative in the Union, these guidelines will also provide clarification on the process for the designation of this representative under Article 27 and its responsibilities and obligations.

對非設立於歐盟境內卻符合第 3 條第 2 項涉及資料運用活動之資料控管者或受託運用者，須於歐盟內指定代表。這些指引也將依據第 27 條，闡明指定代表的程序及其責任和義務。

As a general principle, the EDPB asserts that where the processing of personal data falls within the territorial scope of the GDPR, all provisions of the Regulation apply to such processing. These guidelines will specify the various scenarios that may arise, depending on the type of processing activities, the entity carrying out these processing activities or the

location of such entities, and will detail the provisions applicable to each situation. It is therefore essential that controllers and processors, especially those offering goods and services at international level, undertake a careful and *in concreto* assessment of their processing activities, in order to determine whether the related processing of personal data falls under the scope of the GDPR.

作為一般原則，EDPB 主張，若個人資料之運用屬於 GDPR 的地域範圍，則此規則的所有規範均適用於該運用。本指引將依據運用活動的類型、執行運用活動的實體或實體之所在地，具體說明可能出現的各種情況，並詳細列舉適用於每種情況之規範。因此，資料控管者和受託運用者，尤其是那些提供國際性商品和服務者，必須對其運用之活動進行詳細且*具體*的評估，以確定相關的個人資料運用是否屬於 GDPR 的適用範圍。

The EDPB underlines that the application of Article 3 aims at determining whether a particular processing activity, rather than a person (legal or natural), falls within the scope of the GDPR. Consequently, certain processing of personal data by a controller or processor might fall within the scope of the Regulation, while other processing of personal data by that same controller or processor might not, depending on the processing activity.

EDPB 強調，第 3 條之適用旨在確認特定之運用活動是否屬於 GDPR 之適用範圍，而非確認當事人（法人或自然人）是否屬於 GDPR 之適用範圍。因此控管者或受託運用者對個人資料之某些運用可能屬於本規則之適用範圍，而由同一控管者或受託運用者對個人資料之其他運用則可能（取決於該運用活動）不屬於本規則之適用範圍。

These guidelines, initially adopted by the EDPB on 16 November, have been submitted to a public consultation from 23rd November 2018 to 18th January 2019 and have been updated taking into account the contributions and feedback received.

本指引最初由 EDPB 於 11 月 16 日通過，在 2018 年 11 月 23 日至 2019 年 1 月 18 日提交公眾諮詢，並於評估獲得之提議和反饋後有所更新。

1. APPLICATION OF THE ESTABLISHMENT CRITERION-ART3(1)

第 3 條第 1 項據點(Establishment)準則之適用

Article 3(1) of the GDPR provides that the "*Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union*

or not."
GDPR 第 3 條第 1 項規定「*本規則適用於資料控管者或受託運用者在歐盟境內設立之據點所為之個人資料運用活動，不論該運用是否發生於歐盟境內*」。

Article 3(1) GDPR makes reference not only to an establishment of a controller, but also to an establishment of a processor. As a result, the processing of personal data by a processor may also be subject to EU law by virtue of the processor having an establishment located within the EU.
GDPR 第 3 條第 1 項不僅適用於資料控管者所設立之據點，亦適用於受託運用者所設立之據點。因此，若受託運用者在歐盟境內設有據點，該受託運用者所為之個人資料運用可能也適用於歐盟之法律。

Article 3(1) ensures that the GDPR applies to the processing by a controller or processor carried out in the context of the activities of an establishment of that controller or processor in the Union, regardless of the actual place of the processing. The EDPB therefore recommends a threefold approach in determining whether or not the processing of personal data falls within the scope of the GDPR pursuant to Article 3(1).
第 3 條第 1 項確認 GDPR 適用於資料控管者或受託運用者在歐盟境內設立之據點所為之資料運用活動，不論該運用是否發生於歐盟境內。因此，EDPB 建議一種三重判斷法來決定個人資料之運用是否屬於 GDPR 第 3 條第 1 項之適用範圍

The following sections clarify the application of the establishment criterion, first by considering the definition of an 'establishment' in the EU within the meaning of EU data protection law, second by looking at what is meant by 'processing in the context of the activities of an establishment in the Union', and lastly by confirming that the GDPR will apply regardless of whether the processing carried out in the context of the activities of this establishment takes place in the Union or not.
以下篇章將闡釋據點準則之適用。第一部分考量在歐盟資料保護法下，於歐盟境內設立「據點」之定義。第二部分著眼於「在歐盟境內之據點，於其活動範圍內所為的資料運用」之定義。最後一部分則確認無論該據點於其活動範圍內所為之運用是否發生於歐盟境內，GDPR 仍適用之。

a) "An establishment in the Union"
「歐盟境內之據點」

Before considering what is meant by "an establishment in the Union" it is first necessary to identify who is the controller or processor for a given processing activity.

According to the definition in Article 4(7) of the GDPR, controller means "the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data". A processor, according to Article 4(8) of the GDPR, is "a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller". As established by relevant CJEU case law and previous WP29 opinion[3], the determination of whether an entity is a controller or processor for the purposes of EU data protection law is a key element in the assessment of the application of the GDPR to the personal data processing in question.

在考量「歐盟境內之據點」的含義前，第一必須先確認誰是資料運用行為的控管者或受託運用者。依據 GDPR 第 4 條第 7 項，控管者係指「單獨或與他人共同決定個人資料運用之目的及方式之自然人或法人、公務機關、局處或其他機構」。依據 GDPR 第 4 條第 8 款，受託運用者係指「代表資料控管者運用個人資料之自然人或法人、公務機關、局處或其他機構」。依據歐盟法院相關之判例法及先前 29 條工作小組（WP29[3]）意見，決定某實體是否屬於歐盟個人資料保護法下之控管者或受託運用者，是檢視 GDPR 是否適用於個人資料運用行為的關鍵要素。

While the notion of "main establishment" is defined in Article 4(16), the GDPR does not provide a definition of "establishment" for the purpose of Article 3[4]. However, Recital 22[5] clarifies that an "*[e]stablishment implies the effective and real exercise of activities through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect.*"

雖然第 4 條第 16 款對「主要據點」(main establishment) 的概念做了解釋，但 GDPR 並沒有針對第 3 條的「據點」提供定義[4]。然而，前言第 22 點[5] 闡明「*據點係指透過穩定安排，從事於有效及實際的活動。安排之法律形式，不因其係透過分公司*

[3] G29 WP169 - Opinion 1/2010 on the concepts of "controller" and "processor", adopted on 16th February 2010 and under revision by the EDPB

G29WP169 – 意見1/2010 定義「控管者」與「受託運用者」，於2010年2月16日通過，並由EDPB進行修訂。

[4] The definition of "main establishment" is mainly relevant for the purpose of determining the competence of the supervisory authorities concerned according to Article 56 GDPR. See the WP29 Guidelines for identifying a controller or processor's lead supervisory authority (16/EN WP 244 rev.01) – endorsed by the EDPB.

「主要據點」之定義大體上是和決定GDPR第56條監管機關之權限有關。請參閱WP29確認控管者或受託運用者之主責監管機關指引（16 / EN WP 244 更新版本0.1）- 由EDPB採認。

[5] Recital 22 of the GDPR: "Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union. Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect."

GDPR前言第22點: 「控管者或受託運用者在歐盟境內之據點所為之一切個人資料運用均應受本規則之拘束，無論其運用行為本身是否發生於歐盟境內。據點係指透過穩定安排，從事於有效及實際之活動。此等安排之法律型式，不因其係透過分公司或具有法人資格之子公司所為而有所不同。」

或具有法人資格之子公司所為而有不同」。

This wording is identical to that found in Recital 19 of Directive 95/46/EC, to which reference has been made in several CJEU rulings broadening the interpretation of the term "establishment", departing from a formalistic approach whereby undertakings are established solely in the place where they are registered[6]. Indeed, the CJEU ruled that the notion of establishment extends to any real and effective activity — even a minimal one — exercised through stable arrangements[7]. In order to determine whether an entity based outside the Union has an establishment in a Member State, both the degree of stability of the arrangements and the effective exercise of activities in that Member State must be considered in the light of the specific nature of the economic activities and the provision of services concerned. This is particularly true for undertakings offering services exclusively over the Internet[8].

此一措辭與 95/46/EU 指令中前言第 19 點相同。前言第 19 點已被數個歐盟法院案例引用，並擴充了對「據點」一詞的解釋，不局限在形式上的觀點，也就是據點之設立不應限縮在其所註冊之地點[6]。事實上，歐盟法院裁定，「據點」之範疇應延伸至經由穩定的安排，而從事任何實質且有效的活動，即使是一個最小量的活動[7]。為決定歐盟外之實體是否於某一成員國境內設有據點，必須根據其經濟行為的具體性質以及所提供之服務，來考量在該成員國內活動安排的穩定程度及活動的有效執行。此對僅透過網路提供服務的企業主體尤其如是[8]。

The threshold for "stable arrangement[9]" can actually be quite low when the centre of activities of a controller concerns the provision of services online. As a result, in some circumstances, the presence of one single employee or agent of a non-EU entity in the Union may be sufficient to constitute a stable arrangement (amounting to an 'establishment' for the purposes of Art 3(1)) if that employee or agent acts with a sufficient degree of stability. Conversely, when an employee is based in the EU but the processing is not being carried out in the context of the activities of the EU-based employee in the Union (i.e. the processing relates to activities of the controller outside the EU), the mere presence of an employee in the EU will not result in that processing falling within the scope of

[6] See in particular Google Spain SL, Google Inc. v AEPD, Mario Costeja González (C-131/12), Weltimmo v NAIH (C- 230/14), Verein für Konsumenteninformation v Amazon EU (C-191/15) and Wirtschaftsakademie Schleswig- Holstein (C-210/16).
特別參閱Google Spain SL, Google Inc. v AEPD, Mario Costeja González (C-131/12), Weltimmo v NAIH (C- 230/14), Verein für Konsumenteninformation v Amazon EU (C-191/15) 以及 Wirtschaftsakademie Schleswig- Holstein (C-210/16)。

[7] Weltimmo, paragraph 31.
Weltimmo v NAIH (C- 230/14)，第31段。

[8] Weltimmo, paragraph 29.
Weltimmo v NAIH (C- 230/14)，第29段。

[9] Weltimmo, paragraph 31.
Weltimmo v NAIH (C- 230/14)，第31段。

the GDPR. In other words, the mere presence of an employee in the EU is not as such sufficient to trigger the application of the GDPR, since for the processing in question to fall within the scope of the GDPR, it must also be carried out in the context of the activities of the EU-based employee.

「穩定安排」[9]的門檻，對以提供網路服務為其活動中心的控管者來說，實際上是相當低的。因此，在某些情況下，一個非設立於歐盟的實體，只要其僱員或代理人在歐盟境內之行為具有足夠的穩定性，即使只有一個僱員或代理人，也可能足以符合穩定安排（依據第 3 條第 1 項得認作為「據點」）之要件。相反的，若某個僱員位於歐盟境內，但運用之執行並非屬位於歐盟境內僱員之活動範圍內（即該運用涉及位於歐盟外控管者之活動時），則僅於歐盟境內存在該名僱員之情況，不會導致該運用屬於 GDPR 之適用範圍。易言之，僅於歐盟境內存在一名僱員並不足以觸發 GDPR 之適用，因為要使相關運用落入 GDPR 之範圍，該運用必須屬於位於歐盟境內僱員之活動範圍內。

The fact that the non-EU entity responsible for the data processing does not have a branch or subsidiary in a Member State does not preclude it from having an establishment there within the meaning of EU data protection law. Although the notion of establishment is broad, it is not without limits. It is not possible to conclude that the non-EU entity has an establishment in the Union merely because the undertaking's website is accessible in the Union[10].

在歐盟個人資料保護法的定義中，負責資料運用的非位於歐盟之實體，於歐盟成員國內未設有分公司或子公司之事實，並不排除其在成員國內設立「據點」之可能。雖然據點的涵蓋範圍較廣，但並非沒有限制。不得僅因某一事業網站可於歐盟境內瀏覽，即認定該非位於歐盟境內之實體於歐盟境內設有據點[10]。

Example 1: A car manufacturing company with headquarters in the US has a fully-owned branch and office located in Brussels overseeing all its operations in Europe, including marketing and advertisement.

示例 1：一家總部位於美國的汽車製造公司，在布魯塞爾設有一家全資分公司及辦公室，負責監督歐洲業務，包括行銷和廣告。

The Belgian branch can be considered to be a stable arrangement, which exercises real and effective activities in light of the nature of the economic activity carried out by the car manufacturing company. As such, the Belgian branch could therefore be considered as an establishment in the Union, within the meaning of the GDPR.

[10] CJEU, Verein für Konsumenteninformation v. Amazon EU Sarl, Case C 191/15, 28 July 2016, paragraph 76 (hereafter "Verein für Konsumenteninformation").
歐盟法院， Verein für Konsumenteninformation v. Amazon EU Sarl, Case C 191/15，2016年7月28日，第76段。

位於比利時的分公司可被視為是一個穩定安排，該分公司是根據汽車製造公司所執行經濟活動之性質，進行實際且有效的活動。因此，在 GDPR 定義中，比利時的分公司可被認定為係設立於歐盟境內之據點。

Once it is concluded that a controller or processor is established in the EU, an *in concreto* analysis should then follow to determine whether the processing in question is carried out in the context of the activities of this establishment, in order to determine whether Article 3(1) applies. If a controller or processor established outside the Union exercises "a real and effective activity - even a minimal one" - through "stable arrangements", regardless of its legal form (e.g. subsidiary, branch, office...), in the territory of a Member State, this controller or processor can be considered to have an establishment in that Member State[11]. It is therefore important to consider whether the processing of personal data takes place "in the context of the activities of" such an establishment as highlighted in Recital 22.

為確認第 3 條第 1 項之適用，一旦控管者或受託運用者被認定於歐盟境內設有據點，即應採用*具體*的分析方式 (*in concreto*) 來決定，系爭資料運用是否是屬於該據點活動範圍內之行為。若設立於歐盟外之控管者或受託運用者，經由「穩定安排」，無論其法律形式（例如子公司、分公司或辦公室），在成員國的領土範圍內，實行實際且有效之活動（即使是最小限度之活動），即可被認為於該成員國內設有據點[11]。因此，如前言第 22 點中所強調，資料運用行為是否屬於該據點「活動範圍內之行為」是很重要的考量。

b) Processing of personal data carried out "in the context of the activities of" an establishment

b) 個人資料之運用屬於據點「活動範圍內」之行為

Article 3(1) confirms that it is not necessary that the processing in question is carried out "by" the relevant EU establishment itself; the controller or processor will be subject to obligations under the GDPR whenever the processing is carried out "in the context of the activities" of its relevant establishment in the Union. The EDPB recommends that determining whether processing is being carried out in the context of an establishment of the controller or processor in the Union for the purposes of Article 3(1) should be carried out on a case-by-case basis and based on an analysis *in concreto*. Each scenario

[11] See in particular para 29 of the Weltimmo judgment, which emphasizes a flexible definition of the concept of 'establishment' and clarifies that 'the degree of stability of the arrangements and the effective exercise of activities in that other Member State must be interpreted in the light of the specific nature of the economic activities and the provision of services concerned.'
特別參閱Weltimmo判決第29段，其中強調對「據點」概念的彈性定義，並闡明「安排的穩定程度和有效地執行活動，必須根據該經濟活動的具體性質以及所提供之服務，做進一步解釋」。

must be assessed on its own merits, taking into account the specific facts of the case.
依據第 3 條第 1 項，資料運用並非必須由位於歐盟境內之據點執行，只要運用行為係屬於該相關位於歐盟境內據點的活動範圍內，資料控管者或受託運用者即會受到 GDPR 義務之約束。EDPB 建議，鑒於第 3 條第 1 項之目的，決定運用是否屬於控管者或受託運用者據點活動範圍內之行為，應依據個案研究 (case-by-case)，並依循*具體*的方式分析。任一案件都需考量其特殊具體事實，並根據自身的特性進行評估。

The EDPB considers that, for the purpose of Article 3(1), the meaning of "*processing in the context of the activities of an establishment of a controller or processor*" is to be understood in light of the relevant case law. On the one hand, with a view to fulfilling the objective of ensuring effective and complete protection, the meaning of "in the context of the activities of an establishment" cannot be interpreted restrictively[12]. On the other hand, the existence of an establishment within the meaning of the GDPR should not be interpreted too broadly to conclude that the existence of any presence in the EU with even the remotest links to the data processing activities of a non-EU entity will be sufficient to bring this processing within the scope of EU data protection law. Some commercial activity carried out by a non-EU entity within a Member State may indeed be so far removed from the processing of personal data by this entity that the existence of the commercial activity in the EU would not be sufficient to bring that data processing by the non-EU entity within the scope of EU data protection law[13].
EDPB 認為，就第 3 條第 1 項之目的而言，應根據相關判例法來解釋何謂「*資料控管者或受託運用者所設據點活動範圍內所為之資料運用*」。一方面，為達到有效且完整保護之目的，「據點活動範圍」之含義不應被限縮解釋[12]。另一方面，在 GDPR 中，據點的存在也不應過寬解釋，以致於任何存在於歐盟的實體，即使與非位於歐盟實體之資料運用活動，僅有最遠端的連結，亦會被認為其活動屬於歐盟個人資料保護法的適用範圍。當由非設立於歐盟的實體於成員國內所為之商業活動，與運用個人資料行為大相徑庭時，於此非歐盟實體位於歐盟境內之商業活動則不足以使該運用個人資料的行為適用歐盟個資保護法[13]。

Consideration of the following two factors may help to determine whether the processing is being carried out by a controller or processor in the context of its establishment in the Union.

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[12] Weltimmo, paragraph 25 and Google Spain, paragraph 53.
Weltimmo v NAIH (C- 230/14)，第25段和Google Spain第53段。
[13] WP 179 update - Update of Opinion 8/2010 on applicable law in light of the CJEU judgment in Google Spain, 16th December 2015.
WP 179更新 - 根據2015年12月16日歐盟法院對Google Spain判決於相關適用法律更新意見8/2010。

就下列兩項因素之考量，可協助確認運用是否屬於控管者或受託運用者位於歐盟境內據點活動範圍內之行為：

i) *Relationship between a data controller or processor outside the Union and its local establishment in the Union*
i) *設立於歐盟外之資料控管者或受託運用者與其歐盟本地據點之關聯*

The data processing activities of a data controller or processor established outside the EU may be inextricably linked to the activities of a local establishment in a Member State, and thereby may trigger the applicability of EU law, even if that local establishment is not actually taking any role in the data processing itself[14]. If a case by case analysis on the facts shows that there is an inextricable link between the processing of personal data carried out by a non-EU controller or processor and the activities of an EU establishment, EU law will apply to that processing by the non-EU entity, whether or not the EU establishment plays a role in that processing of data[15].
當設立於歐盟境外資料控管者或受託運用者之資料運用活動，與設立於成員國境內當地據點的活動密不可分時，即使歐盟本地據點並未實際參與任何資料運用，亦可觸發歐盟法律的適用[14]。若於個案分析中，事實證明設立於歐盟外之控管者或受託運用者的個人資料運用行為與設立於歐盟內之據點的活動，存在著不可分割之關聯，歐盟法律將適用於歐盟外實體所為之資料運用行為，無論於歐盟內之據點是否參與此資料之運用[15]。

ii) *Revenue raising in the Union*
ii) *歐盟境內收益之增加*

Revenue-raising in the EU by a local establishment, to the extent that such activities can be considered as "inextricably linked" to the processing of personal data taking place outside the EU and individuals in the EU, may be indicative of processing by a non-EU controller or processor being carried out "in the context of the activities of the EU establishment", and may be sufficient to result in the application of EU law to such processing[16].

[14] CJEU, Google Spain, Case C 131/12.
歐盟法院，Google Spain, Case C 131/12。
[15] G29WP 179 update - Update of Opinion 8/2010 on applicable law in light of the CJEU judgment in Google Spain, 16th December 2015.
G29WP 179更新 - 根據2015年12月16日歐盟法院對Google Spain判決於相關適用法律更新意見8/2010。
[16] This may potentially be the case, for example, for any foreign operator with a sales office or some other presence in the EU, even if that office has no role in the actual data processing, in particular where the processing takes place in the context of the sales activity in the EU and the activities of the

當設立於歐盟境內之據點收益的增加，與設立於歐盟外之資料控管者或受託運用者對歐盟內個人所為之資料運用行為被視為「密不可分」時，該運用行為即可認作係非設立於歐盟之資料控管者或受託運用者，在歐盟境內所設據點的活動範圍內，所為之資料運用行為，並足以引發歐盟法律之適用[16]。

The EDPB recommends that non-EU organisations undertake an assessment of their processing activities, first by determining whether personal data are being processed, and secondly by identifying potential links between the activity for which the data is being processed and the activities of any presence of the organisation in the Union. If such a link is identified, the nature of this link will be key in determining whether the GDPR applies to the processing in question, and must be assessed inter alia against the two elements listed above.

EDPB 建議非設立於歐盟之企業需評估自身資料運用行為。首先須確認是否有運用個人資料之情事，其次是確認資料運用活動與企業設立於歐盟境內之任何組織的活動，是否存在可能的關聯性。若可確認其關聯性，該關聯之性質，將會是決定 GDPR 適用的關鍵要素，因此，除其他事項外，必須基於上述兩項要件進行評估。

Example 2: An e-commerce website is operated by a company based in China. The personal data processing activates of the company are exclusively carried out in China. The Chinese company has established a European office in Berlin in order to lead and implement commercial prospection and marketing campaigns towards EU markets.

示例 2: 某電子商務網站由一設立於中國的公司經營。該公司個人資料運用之活動僅限於中國境內。為了領導及執行針對歐洲市場的商業勘查和銷售活動，該公司於柏林設立了一間歐洲辦事處。

In this case, it can be considered that the activities of the European office in Berlin are inextricably linked to the processing of personal data carried out by the Chinese e-commerce website, insofar as the commercial prospection and marketing campaign towards EU markets notably serve to make the service offered by the e-commerce website profitable. The processing of personal data by the Chinese company in relation to EU sales is indeed inextricably linked to the activities of the European office in Berlin relating to commercial prospection and marketing campaign towards EU market. The processing of personal data by the Chinese company in connection with EU sales can therefore be considered as carried out in the context of the activities of the European

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establishment are aimed at the inhabitants of the Member States in which the establishment is located (WP179 update).

此類型可能發生之情況如，任何在歐盟設有銷售辦事處或其他態樣的外國運營商，即使該辦事處沒有參與任何實際資料運用行為，尤其當資料運用行為與歐盟銷售活動相關，而辦事處主要業務是針對成員國當地居民的情形（WP179更新）。

office, as an establishment in the Union. This processing activity by the Chinese company will therefore be subject to the provisions of the GDPR as per its Article 3(1).
在此案例中，若針對歐洲市場的商業勘查和行銷活動是為了使電子商務網站所提供之服務獲利，柏林歐洲辦事處之活動即可被視為與中國電子商務網站所執行之個人資料運用行為有著密不可分之關聯。中國公司就歐盟銷售所為之個人資料運用，的確與位於柏林的歐洲辦事處針對歐洲市場的商業勘查和銷售所為之活動密不可分。因此，中國公司就歐盟銷售所為之個人資料運用行為，可被視作為歐盟辦事處(位於歐盟境內之據點)活動範圍內之行為。依據第 3 條第 1 項，該中國公司之運用活動將因此屬於 GDPR 之適用範圍。

Example 3: A hotel and resort chain in South Africa offers package deals through its website, available in English, German, French and Spanish. The company does not have any office, representation or stable arrangement in the EU.
示例 3：位於南非的一家酒店和度假村連鎖店，透過網站提供套裝優惠。該網站提供英文、德文、法文以及西班牙文的版本。該公司於歐盟境內未設置任何辦事處、代表處或其他穩定安排。

In this case, in the absence of any representation or stable arrangement of the hotel and resort chain within the territory of the Union, it appears that no entity linked to this data controller in South Africa can qualify as an establishment in the EU within the meaning of the GDPR. Therefore the processing at stake cannot be subject to the provisions of the GDPR, as per Article 3(1).
在此案例中，因於歐盟境內未設立任何酒店或度假村連鎖店的代表處或穩定安排，在 GDPR 的定義下，沒有任何實體可被視為是此南非資料控管者設立於歐盟境內之據點。因此，該資料運用行為不屬於 GDPR 第 3 條第 1 項的適用範圍。

However, it must be analysed *in concreto* whether the processing carried out by this data controller established outside the EU can be subject to the GDPR, as per Article 3(2).
然而，仍必須依據*具體*的分析方式，確認非設立於歐盟境內之控管者所為之資料運用行為，是否屬於 GDPR 第 3 條第 2 項的適用範圍。

c) Application of the GDPR to the establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not
c) GDPR 適用於控管者或受託運用者在歐盟境內設立之據點，不論資料運用是否發生於歐盟境內

As per Article 3(1), the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union triggers the application of the GDPR and the related obligations for the data controller or processor concerned.
依據第 3 條第 1 項，任何控管者或受託運用者在歐盟據點活動範圍內所為之資料運用行為，皆可引發 GDPR 及其對資料控管者或受託運用者相關義務規範之適用。

The text of the GDPR specifies that the Regulation applies to processing in the context of the activities of an establishment in the EU "*regardless of whether the processing takes place in the Union or not*". It is the presence, through an establishment, of a data controller or processor in the EU and the fact that a processing takes place in the context of the activities of this establishment that trigger the application of the GDPR to its processing activities. The place of processing is therefore not relevant in determining whether or not the processing, carried out in the context of the activities of an EU establishment, falls within the scope of the GDPR.
GDPR 的本文明定，本規則適用於設立於歐盟境內之據點所為之個人資料運用活動，「*不論該運用是否發生於歐盟境內*」。當資料控管者或受託運用者，經由以設置據點之方式，於歐盟內存在，且資料之運用屬於該據點活動範圍內之事實，即有 GDPR 對此運用活動之適用性。因此，運用行為之地點，與歐盟境內據點活動範圍內所為之運用是否適用 GDPR 無關。

Example 4: A French company has developed a car-sharing application exclusively addressed to customers in Morocco, Algeria and Tunisia. The service is only available in those three countries but all personal data processing activities are carried out by the data controller in France.
示例 4：一間法國公司，開發了一個專門針對摩洛哥、阿爾及利亞和突尼西亞客戶的乘車共享應用程式。該服務僅提供於此三個國家，但所有個人資料運用活動均由位於法國的資料控管者執行。

While the collection of personal data takes place in non-EU countries, the subsequent processing of personal data in this case is carried out in the context of the activities of an establishment of a data controller in the Union. Therefore, even though processing relates to personal data of data subjects who are not in the Union, the provisions of the GDPR will apply to the processing carried out by the French company, as per Article 3(1).
在此案例中，雖然個人資料的蒐集發生在非歐盟國家，但資料的後續運用，皆由資料控管者設立於歐盟境內之據點執行。因此，即使資料運用所涉及之當事人非位於歐盟境內，依據第 3 條第 1 項之規定，GDPR 的規則仍適用於該法國公司運

用個人資料之行為。

Example 5: A pharmaceutical company with headquarters in Stockholm has located all its personal data processing activities with regards to its clinical trial data in its branch based in Singapore. In this case, while the processing activities are taking place in Singapore, that processing is carried out in the context of the activities of the pharmaceutical company in Stockholm, i.e. of a data controller established in the Union. The provisions of the GDPR therefore apply to such processing, as per Article 3(1).

示例 5：一間總部設立於斯德哥爾摩的製藥公司，其所有與臨床試驗相關之個人資料運用活動皆係由位於新加坡的分公司執行。於此情況下，雖然所有運用活動皆發生於新加坡，該運用之執行應屬位於斯德哥爾摩製藥公司之活動範圍內，意即，屬於設立於歐盟境內之資料控管者之活動範圍內。依據第 3 條第 1 項之規定，GDPR 之規則仍適用於該運用。

In determining the territorial scope of the GDPR, geographical location will be important under Article 3(1) with regard to the place of establishment of:
依據第 3 條第 1 項，在確認 GDPR 的地域範圍時，據點設立之地理位置於以下兩種情形至關重要：
- the controller or processor itself (is it established inside or outside the Union?);
- 控管者或受託運用者本身的地理位置（設立於歐盟境內或境外？）
- any business presence of a non-EU controller or processor (does it have an establishment in the Union?)
- 非設立於歐盟境內之控管者或受託運用者任何業務存在地點（是否在歐盟境內設有據點？）

However, geographical location is not important for the purposes of Article 3(1) with regard to the place in which processing is carried out, or with regard to the location of the data subjects in question.
然而，就第 3 條第 1 項之目的，地理位置對資料運用地點以及當事人所在地而言，並不重要。

The text of Article 3(1) does not restrict the application of the GDPR to the processing of personal data of individuals who are in the Union. The EDPB therefore considers that any personal data processing in the context of the activities of an establishment of a controller or processor in the Union would fall under the scope of the GDPR, regardless of the location or the nationality of the data subject whose personal data are being

processed. This approach is supported by Recital 14 of the GDPR which states that "*[t]he protection afforded by this Regulation should apply to natural persons, whatever their nationality or place of residence, in relation to the processing of their personal data.*"

第 3 條第 1 項條文本身並未限縮 GDPR 的適用範圍在運用位於歐盟境內之自然人的個人資料。因此，EDPB 認為，無論當事人的位置或國籍如何，任何個人資料運用行為，只要屬於資料控管者或受託運用者在歐盟境內所設據點的活動範圍內，皆屬於 GDPR 的適用範圍。GDPR 的前言第 14 點也支持此見解：「*本規則所保護者應適用於自然人，不論當事人之國籍或住居所，凡涉及其個人資料之運用均屬之*」。

d) Application of the establishment criterion to controller and processor
d)資料控管者和受託運用者設置據點準則之適用

As far as processing activities falling under the scope of Article 3(1) are concerned, the EDPB considers that such provisions apply to controllers and processors whose processing activities are carried out in the context of the activities of their respective establishment in the EU. While acknowledging that the requirements for establishing the relationship between a controller and a processor[17] does not vary depending on the geographical location of the establishment of a controller or processor, the EDPB takes the view that when it comes to the identification of the different obligations triggered by the applicability of the GDPR as per Article 3(1), the processing by each entity must be considered separately.

EDPB 認為，只要資料運用活動屬於第 3 條第 1 項之適用範圍，即運用行為屬於設立於歐盟境內各自據點的活動範圍內，該條款則適用於資料控管者和受託運用者。雖然認知到資料控管者和受託運用者之間建立連結關係的要求不會因控管者和受託運用者設置的地理位置而有所不同[17]，EDPB 認為，依據第 3 條第 1 項，在確認因 GDPR 的適用性而引發不同的義務時，每個實體的資料運用行為皆必須單獨考量。

The GDPR envisages different and dedicated provisions or obligations applying to data controllers and processors, and as such, should a data controller or processor be subject

[17] In accordance with Article 28, the EDPB recalls that processing activities by a processor on behalf of a controller shall be governed by a contract or other legal act under Union or Member State law, that is binding on the processor with regard to the controller, and that controllers shall only use processors providing sufficient guarantees to implement appropriate measures in such manner that processing will meet the requirement of the GDPR and ensure the protection of data subjects' rights.
根據第28條，EDPB回顧當運用行為係由受託運用者代表控管者所為時，該運用需受到歐盟或其成員國法律中有關契約或其他立法之管制，該等規定對受託運用者及控管者具有拘束力。控管者得任用之受託運用者，需能提供充足保證會施以適當且符合GDPR要求之措施，並確保個資當事人權利之保障。

to the GDPR as per Article 3(1), the related obligations would apply to them respectively and separately. In this context, the EDPB notably deems that a processor in the EU should not be considered to be an establishment of a data controller within the meaning of Article 3(1) merely by virtue of its status as processor on behalf of a controller.
GDPR 對資料控管者和受託運用者設計了不同且專用的條款或義務。因此，若資料控管者或受託運用者依第 3 條第 1 項受拘束於 GDPR 時，相關義務將分別適用之。於此情形，EDPB 認為，位於歐盟的資料受託運用者不應僅憑其代表控管者而作為受託運用者的地位，而被視為屬於第 3 條第 1 項定義上資料控管者所設立之據點。

The existence of a relationship between a controller and a processor does not necessarily trigger the application of the GDPR to both, should one of these two entities not be established in the Union.
若控管者或受託運用者其中之一非位於歐盟境內，二者間存在的關聯性不一定會觸發 GDPR 同時適用於控管者與受託運用者。

An organisation processing personal data on behalf of, and on instructions from, another organisation (the client company) will be acting as processor for the client company (the controller). Where a processor is established in the Union, it will be required to comply with the obligations imposed on processors by the GDPR (the 'GDPR processor obligations'). If the controller instructing the processor is also located in the Union, that controller will be required to comply with the obligations imposed on controllers by the GDPR (the 'GDPR controller obligations'). Processing activity which, when carried out by a controller, falls within the scope of the GDPR by virtue of Art 3(1) will not fall outside the scope of the Regulation simply because the controller instructs a processor not established in the Union to carry out that processing on its behalf.
當一間組織代表另一間組織（客戶公司）並依其指示進行資料運用行為，前者即為後者（資料控管者）之資料受託運用者。若受託運用者設立於歐盟境內，則須遵守 GDPR 對受託運用者訂定之相關義務（GDPR 受託運用者義務）。若控管者亦位於歐盟境內，該控管者必須遵守 GDPR 對控管者訂定之相關義務（GDPR 控管者義務）。當運用活動係由控管者執行，且依據第 3 條第 1 項屬於 GDPR 之適用範圍時，不會僅因控管者指示非設立於歐盟境內之受託運用者代表其執行該運用，而使該運用不受本規則拘束。

i) Processing by a controller established in the EU instructing a processor not established in the Union
i) 位於歐盟境內之控管者任用非設立於歐盟境內之受託運用者

Where a controller subject to GDPR chooses to use a processor located outside the Union for a given processing activity, it will still be necessary for the controller to ensure by contract or other legal act that the processor processes the data in accordance with the GDPR. Article 28(3) provides that the processing by a processor shall be governed by a contract or other legal act. The controller will therefore need to ensure that it puts in place a contract with the processor addressing all the requirements set out in Article 28(3). In addition, it is likely that, in order to ensure that it has complied with its obligations under Article 28(1) – to use only a processor providing sufficient guarantees to implement measures in such a manner that processing will meet the requirements of the Regulation and protect the rights of data subjects – the controller may need to consider imposing, by contract, the obligations placed by the GDPR on processors subject to it. That is to say, the controller would have to ensure that the processor not subject to the GDPR complies with the obligations, governed by a contract or other legal act under Union or Member State law, referred to Article 28(3).
當適用於 GDPR 之控管者就特定運用活動，任用位於歐盟外之受託運用者時，該控管者仍須確保藉由契約或其他立法之拘束，使受託運用者運用個人資料之行為符合 GDPR 的規範。第 28 條第 3 項規定，受託運用者所為運用行為應受契約或其他立法之拘束。控管者因此需確保和受託運用者之契約滿足第 28 條第 3 項所有要件。此外，第 28 條第 1 項規定控管者僅得任用可提供充足保證會實施適當措施、使運用行為符合本規則要求，並確保當事人權利保障之受託運用者。為確保遵守該條之義務，控管者可能需要考量透過契約強加 GDPR 之義務於受託運用者。也就是說，依據第 28 條第 3 項，控管者須藉由契約或歐盟法或成員國法之其他立法拘束，使不受 GDPR 約束之受託運用者履行其相關義務。

The processor located outside the Union will therefore become indirectly subject to some obligations imposed by controllers subject to the GDPR by virtue of contractual arrangements under Article 28. Moreover, provisions of Chapter V of the GDPR may apply.
因此，藉由第 28 條之契約安排，屬於 GDPR 適用範圍之控管者可強加某些義務於位於歐盟外之受託運用者，使其間接受到 GDPR 之管轄。此外，GDPR 第 5 章的規定亦有適用之可能。

Example 6: A Finnish research institute conducts research regarding the Sami people. The institute launches a project that only concerns Sami people in Russia. For this project the institute uses a processor based in Canada.
示例 6: 一家芬蘭研究機構對薩米人進行研究，且研究項目僅涉及俄羅斯的薩米人。該研究機構任用位於加拿大的資料受託運用者。

The Finnish controller has a duty to only use processors that provide sufficient guarantees to implement appropriate measures in such manner that processing will meet the requirement of the GDPR and ensure the protection of data subjects' rights. The Finnish controller needs to enter into a data processing agreement with the Canadian processor, and the processor's duties will be stipulated in that legal act.
位於芬蘭的控管者有責任確保任用可提供充足保證會實施適當措施、使運用行為符合 GDPR 要求，並確保當事人權利保障之受託運用者。芬蘭的控管者需與加拿大的受託運用者簽訂資料運用契約，並在這法律行為中訂定受託運用者之相關義務。

ii) *Processing in the context of the activities of an establishment of a processor in the Union*
ii) *資料運用行為屬於受託運用者位於歐盟境內據點之活動範圍內*

Whilst case law provides us with a clear understanding of the effect of processing being carried out in the context of the activities of an EU establishment of the controller, the effect of processing being carried out in the context of the activities of an EU establishment of a processor is less clear.
雖然判決先例對控管者位於歐盟境內據點所為資料運用行為之影響提供清楚的說明，但對受託運用者位於歐盟境內據點所為資料運用行為之影響為何，則較不清楚。

The EDPB emphasises that it is important to consider the establishment of the controller and processor separately when determining whether each party is of itself 'established in the Union'.
EDPB 強調，當在確認是否雙方皆各自「設立於歐盟境內」時，控管者和受託運用者所設立之據點必需分別考量。

The first question is whether the controller itself has an establishment in the Union, and is processing in the context of the activities of that establishment. Assuming the controller is not considered to be processing in the context of its own establishment in the Union, that controller will not be subject to GDPR controller obligations by virtue of Article 3(1) (although it may still be caught by Article 3(2)). Unless other factors are at play, the processor's EU establishment will not be considered to be an establishment in respect of the controller.
第一個須考量的問題在於控管者是否在歐盟境內設有據點且資料運用行為是否屬於該據點的活動範圍內。假設控管者的運用行為不被認為屬於歐盟所設據點的活

動範圍內，依據第 3 條第 1 項之規定，該控管者將不受 GDPR 之拘束（雖然仍有第 3 條第 2 項適用之可能）。除非有其他因素，受託運用者設立於歐盟境內之據點將不會被視為係與控管者相關之據點。

The separate question then arises of whether the processor is processing in the context of its establishment in the Union. If so, the processor will be subject to GDPR processor obligations under Article 3(1). However, this does not cause the non-EU controller to become subject to the GDPR controller obligations. That is to say, a "non-EU" controller (as described above) will not become subject to the GDPR simply because it chooses to use a processor in the Union.
另一個須考量的問題在於受託運用者所為之運用行為是否屬於其設立於歐盟境內據點的活動範圍內。如果是，依據第 3 條第 1 項，受託運用者將受 GDPR 受託運用者義務所拘束。然而，這並不會導致非設立於歐盟境內之控管者受到 GDPR 控管者義務之拘束。如前所述，「非位於歐盟境內」之控管者，不會僅因任用位於歐盟境內之受託運用者，而受 GDPR 拘束。

By instructing a processor in the Union, the controller not subject to GDPR is not carrying out processing "in the context of the activities of the processor in the Union". The processing is carried out in the context of the controller's own activities; the processor is merely providing a processing service[18] which is not "inextricably linked" to the activities of the controller. As stated above, in the case of a data processor established in the Union and carrying out processing on behalf of a data controller established outside the Union and not subject to the GDPR as per Article 3(2), the EDPB considers that the processing activities of the data controller would not be deemed as falling under the territorial scope of the GDPR merely because it is processed on its behalf by a processor established in the Union. However, even though the data controller is not established in the Union and is not subject to the provisions of the GDPR as per Article 3(2), the data processor, as it is established in the Union, will be subject to the relevant provisions of the GDPR as per Article 3(1).
即使任用位於歐盟境內之受託運用者，不受 GDPR 約束之控管者，其運用行為仍不屬於位於歐盟境內之受託運用者活動範圍內所為之運用行為。該運用行為係由控管者在其自身活動範圍內所實行，而受託運用者僅提供運用服務 [18]，該服務與控管者的活動並非「密不可分」。如上所述，EDPB 認為，位於歐盟境內之資料受託運用者，代表非設立於歐盟且不屬於 GDPR 第 3 條第 2 項管轄範圍內之資料控管者執行資料運用時，該控管者之運用活動不會僅因為任用位於歐盟境內之受託運用者代表其執行，而被視為屬於 GDPR 的地域範圍。然而，即使資料控管者非

[18] The offering of a processing service in this context cannot be considered either as an offer of a service to data subjects in the Union.
此處所提及之運用服務不得係為歐盟境內個資當事人所提供之服務。

設立於歐盟境內且不屬於 GDPR 第 3 條第 2 項適用範圍，設立於歐盟境內之資料受託運用者，仍應根據第 3 條第 1 項，受 GDPR 的相關規範約束。

Example 7: A Mexican retail company enters into a contract with a processor established in Spain for the processing of personal data relating to the Mexican company's clients. The Mexican company offers and directs its services exclusively to the Mexican market and its processing concerns exclusively data subjects located outside the Union.
示例 7：一間墨西哥零售公司與一個位於西班牙的受託運用者簽訂契約，以運用與墨西哥公司客戶相關之個人資料。該墨西哥公司僅對墨西哥市場提供服務，且運用行為僅涉及歐盟外之當事人。

In this case, the Mexican retail company does not target persons on the territory of the Union through the offering of goods or services, nor it does monitor the behaviour of person on the territory of the Union. The processing by the data controller, established outside the Union, is therefore not subject to the GDPR as per Article 3(2).
在此案例中，墨西哥零售公司不僅沒有針對歐盟境內之個人提供商品或服務，亦無監控歐盟境內個人之行為。因此，設立於歐盟外之資料控管者所為的運用行為，不受 GDPR 第 3 條第 2 項之拘束。

The provisions of the GDPR do not apply to the data controller by virtue of Article 3(1) as it is not processing personal data in the context of the activities of an establishment in the Union. The data processor is established in Spain and therefore its processing will fall within the scope of the GDPR by virtue of Article 3(1). The processor will be required to comply with the processor obligations imposed by the regulation for any processing carried out in the context of tis activities.
依據第 3 條第 1 項，GDPR 之規定不適用於該資料控管者，因其所為之運用並不屬於位於歐盟境內據點活動範圍內所為之運用。資料受託運用者位於西班牙，因此依據第 3 條第 1 項，其所為之運用將屬於 GDPR 之適用範圍。該資料受託運用者在執行資料運用活動時，仍須遵守 GDPR 規範之受託運用者義務。

When it comes to a data processor established in the Union carrying out processing on behalf of a data controller with no establishment in the Union for the purpose of the processing activity and which does not fall under the territorial scope of the GDPR as per Article 3(2), the processor will be subject to the following relevant GDPR provisions directly applicable to data processors:
當位於歐盟境內之資料受託運用者，為運用活動之目的，代表於歐盟境內並未設置據點且依據第 3 條第 2 項不屬於 GDPR 地域範圍之控管者執行資料運用時，資料受託運用者將直接受以下 GDPR 相關條文約束：

- The obligations imposed on processors under Article 28 (2), (3), (4), (5) and (6), on the duty to enter into a data processing agreement, with the exception of those relating to the assistance to the data controller in complying with its (the controller's) own obligations under the GDPR.
- 依據第 28 條第 2、3、4、5 和第 6 項負有簽訂資料運用契約之義務，但為協助資料控管者遵守其 GDPR 下之義務時，不在此限。

- The processor and any person acting under the authority of the controller or of the processor, who has access to personal data, shall not process those data except on instructions from the controller, unless required to do so by Union or Member State law, as per Article 29 and Article 32(4).
- 受託運用者或在控管者或受託運用者授權下行事之任何人，其雖有權限存取個人資料，但除經資料控管者指示，或依據第 29 條以及第 32 條第 4 項受到歐盟法律或成員國法律之要求，不得運用個人資料。

- Where applicable, the processor shall maintain a record of all categories of processing carried out on behalf of a controller, as per Article 30(2).
- 若適用，依據第 30 條第 2 項，受託運用者應保留代表控管者所為之所有類別運用活動之記錄。

- Where applicable, the processor shall, upon request, cooperate with the supervisory authority in the performance of its tasks, as per Article 31.
- 若適用，依據第 31 條，受託運用者應依要求，與監管機關合作執行其任務。

- The processor shall implement technical and organisational measures to ensure a level of security appropriate to the risk, as per Article 32.
- 依據第 32 條，受託運用者應採取技術性及組織性之措施，以確保符合風險的安全程度。

- The processor shall notify the controller without undue delay after becoming aware of a personal data breach, as per Article 33.
- 依據第 33 條，受託運用者應在知悉個人資料侵害事件後通知控管者，不得無故遲延。

- Where applicable, the processor shall designate a data protection officer as per Articles 37 and 38.
- 若適用，依據第 37 條及第 38 條，受託運用者應指定個資保護長。

- The provisions on transfers of personal data to third countries or international organisations, as per Chapter V.
- 依據第 5 章傳輸個人資料至第三國或國際組織之規定。

In addition, since such processing would be carried out in the context of the activities of an establishment of a processor in the Union, the EDPB recalls that the processor will have to ensure its processing remains lawful with regards to other obligations under EU or national law. Article 28(3) also specifies that "*the processor shall immediately inform the controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.*"
此外，由於資料運用活動係由受託運用者設立於歐盟境內之據點於其活動範圍內所執行，EDPB 認為，受託運用者必須確保該運用符合歐盟或國家法律下之其他義務。第 28 條第 3 項規定「*若受託運用者認為某指令違反本規則或其他歐盟或成員國資料保護規定時，應立即通知控管者*」。

In line with the positions taken previously by the Article 29 Working Party, the EDPB takes the view that the Union territory cannot be used as a "data haven", for instance when a processing activity entails inadmissible ethical issues[19], and that certain legal obligations beyond the application of EU data protection law, in particular European and national rules with regard to public order, will in any case have to be respected by any data processor established in the Union, regardless of the location of the data controller. This consideration also takes into account the fact that by implementing EU law, provisions resulting from the GDPR and related national laws, are subject to the Charter of Fundamental Rights of the Union[20]. However, this does not impose additional obligations on controllers outside the Union in respect of processing not falling under the territorial scope of the GDPR.
與第 29 條工作小組採取相同之立場，EDPB 認為，歐盟的領域不得作為「資料避難所」，例如運用活動涉及不可接受的道德問題 [19]，以及某些法律義務超出歐盟個人資料保護法所涵蓋之範圍，尤其是涉及歐盟和成員國有關公共秩序法律時，無論資料控管者所在地為何，設立於歐盟境內之資料受託運用者皆需尊重上揭規則。此概念亦考量到在執行歐盟律法時，無論是 GDPR 或成員國之國內法皆受到歐盟基本權利憲章 [20] 之約束。然而，就非屬於 GDPR 地域範圍之運用，此規範對非設立於歐盟境內之控管者不附加額外義務。

[19] G29WP169 - Opinion 1/2010 on the concepts of "controller" and "processor", adopted on 16th February 2010
G29WP169 – 意見1/2010 定義「資料控管者」與「資料受託運用者」，於2010年2月16日通過。
[20] Charter of Fundamental Right of the European Union, 2012/C 326/02.
歐盟基本權利憲章，2012/C 326/02。

2. APPLICATION OF THE TARGETING CRITERION – ART 3(2)

第 3 條第 2 項特定目標準則之適用

The absence of an establishment in the Union does not necessarily mean that processing activities by a data controller or processor established in a third country will be excluded from the scope of the GDPR, since Article 3(2) sets out the circumstances in which the GDPR applies to a controller or processor not established in the Union, depending on their processing activities.
在歐盟境內未設立據點並不一定表示設立於第三國之資料控管者或受託運用者之運用活動將被排除於 GDPR 之規範，因為第 3 條第 2 項設置了一些情況，依個人資料運用活動之情形，GDPR 可適用於非設立於歐盟境內之控管者或受託運用者。

In this context, the EDPB confirms that in the absence of an establishment in the Union, a controller or processor cannot benefit from the one-stop shop mechanism provided for in Article 56 of the GDPR. Indeed, the GDPR's cooperation and consistency mechanism only applies to controllers and processors with an establishment, or establishments, within the European Union[21].
承上，EDPB 確認若於歐盟境內未設有據點，資料控管者或受託運用者無法受益於 GDPR 第 56 條所規定之一站式（one-stop shop）機制。實際上，GDPR 的合作和一致性機制僅適用於在歐盟境內設有單一或多個據點之資料控管者及受託運用者[21]。

While the present guidelines aim to clarify the territorial scope of the GDPR, the EDPB also wish to stress that controllers and processors will also need to take into account other applicable texts, such as for instance EU or Member States' sectorial legislation and national laws. Several provisions of the GDPR indeed allow Member States to introduce additional conditions and to define a specific data protection framework at national level in certain areas or in relation to specific processing situations. Controllers and processors must therefore ensure that they are aware of, and comply with, these additional conditions and frameworks which may vary from one Member State to the other. Such variations in the data protection provisions applicable in each Member State are particularly notable in relation to the provisions of Article 8 (providing that the age at which children may give valid consent in relation to the processing of their data by

[21] WP244, 13th December 2016, Guidelines for identifying a controller or processor's lead supervisory authority.
WP244，確認控管者或受託運用者的主要監管機關之指引，於2016年12月13日通過。

information society services may vary between 13 and 16), of Article 9 (in relation to the processing of special categories of data), Article 23 (restrictions) or concerning the provisions contained in Chapter IX of the GDPR (freedom of expression and information; public access to official documents; national identification number; employment context; processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes; secrecy; churches and religious associations).

雖然現有指引旨在澄清 GDPR 的地域範圍，但 EDPB 亦希望強調控管者和受託運用者必須考量其它可適用之法規，例如歐盟或其成員國之部門立法和國家法律。GDPR 若干條款均實際上允許成員國制定額外要件，並於某些特定領域或關於特定之資料運用情形，允許成員國定義國家層級之個人資料保護體系。因此，控管者及受託運用者必須確保對該額外要件和體制之瞭解與遵守，而這些額外要件和體制或因各成員國而異。各成員國對於個人資料保護規則之相異性，於下列幾項條款尤其值得注意。第 8 條（規定關於兒童對資訊社會服務運用其個人資料可給予有效同意之年齡，此年齡可介於 13 至 16 歲之間），第 9 條（關於特殊類型之個人資料運用），第 23 條（限制），或關於 GDPR 第 9 章之相關規定（言論及資訊自由；官方文件之公眾取得；國民身分證統一編號； 僱傭關係；為實現公共利益、科學或歷史研究目的或統計目的所為之資料運用；保密；教會及宗教組織）。

Article 3(2) of the GDPR provides that "*this Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to: (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or (b) the monitoring of their behaviour as far as their behaviour takes place within the Union.*"

GDPR 第 3 條第 2 項規定「*本規則適用於非設立於歐盟境內之資料控管者或受託運用者對位於歐盟境內之當事人所為涉及如下事項之個人資料運用：（a）對歐盟境內之當事人提供商品或服務，不問是否需要當事人付款;或（b）監控當事人於歐盟境內之行為*」。

The application of the "targeting criterion" towards data subjects who are in the Union, as per Article 3(2), can be triggered by processing activities carried out by a controller or processor not established in the Union which relate to two distinct and alternative types of activities provided that these processing activities relate to data subjects that are in the Union. In addition to being applicable only to processing by a controller or processor not established in the Union, the targeting criteria largely focuses on what the "processing activities" are "related to", which is to be considered on a case-by-case

basis.
依據第 3 條第 2 項，當運用活動與位於歐盟境內之當事人相關時，對位於歐盟境內之當事人的「特定目標準則」(targeting criterion)適用，係由非設立於歐盟境內之控管者或受託運用者所為相關兩種不同且二擇一之資料運用活動引發適用。除僅適用於資料控管者或受託運用者未設立於歐盟境內之運用，特定目標準則主要關注於與「資料運用活動」「相關」之內容，此須根據具體個案情況加以考量。

The EDPB stresses that a controller or processor may be subject to the GDPR in relation to some of its processing activities but not subject to the GDPR in relation to other processing activities. The determining element to the territorial application of the GDPR as per Article 3(2) lies in the consideration of the processing activities in question.
EDPB強調，控管者或受託運用者某些運用活動可能受拘束於GDPR，而其他運用活動則不受GDPR之拘束。依據第3條第2項，GDPR在地域範圍適用之決定性因素在於就系爭運用活動之考量。

In assessing the conditions for the application of the targeting criterion, the EDPB therefore recommends a twofold approach, in order to determine first that the processing relates to personal data of data subjects who are in the Union, and second whether processing relates to the offering of goods or services or to the monitoring of data subjects' behaviour in the Union.
因此，在分析目標性準則適用條件時，EDPB 建議採用一種二重判斷法。第一需先確認與資料運用相關之當事人係位於歐盟境內，第二需認定此運用是否與提供商品或服務或監控當事人於歐盟內之行為相關。

a) Data subjects in the Union
a) 位於歐盟境內之當事人

The wording of Article 3(2) refers to "*personal data of data subjects who are in the Union*". The application of the targeting criterion is therefore not limited by the citizenship, residence or other type of legal status of the data subject whose personal data are being processed. Recital 14 confirms this interpretation and states that "*[t]he protection afforded by this Regulation should apply to natural persons, whatever their nationality or place of residence, in relation to the processing of their personal data*".
第 3 條第 2 項適用於「*歐盟境內當事人之個人資料*」。因此，特定目標準則的適用不受限於當事人之公民身分、居住地或其他類型的法律地位的限制。前言第 14 點確認此種解釋，並指出「*本規則所保護者應適用於自然人，係不論當事人之國籍或居住所，凡涉及其個人資料之運用均屬之*」。

This provision of the GDPR reflects EU primary law which also lays down a broad scope for the protection of personal data, not limited to EU citizens, with Article 8 of the Charter of Fundamental Rights providing that the right to the protection of personal data is not limited but is for "everyone"[22].
GDPR 此規定反映了歐盟主要法律廣泛保護個人資料，不限於歐盟公民，歐洲聯盟基本權利憲章第 8 條規定個人資料受保護之權利沒有限制，且適用於「每個人」[22]。

While the location of the data subject in the territory of the Union is a determining factor for the application of the targeting criterion as per Article 3(2), the EDPB considers that the nationality or legal status of a data subject who is in the Union cannot limit or restrict the territorial scope of the Regulation.
依據第 3 條第 2 項，雖然當事人位於歐盟之位置是適用特定目標準則的決定要素，但 EDPB 認為，位於歐盟境內當事人之國籍或法律地位並不限縮本規則之地域範圍。

The requirement that the data subject be located in the Union must be assessed at the moment when the relevant trigger activity takes place, i.e. at the moment of offering of goods or services or the moment when the behaviour is being monitored, regardless of the duration of the offer made or monitoring undertaken.
當事人位於歐盟境內要件之評估，應根據相關觸發活動發生的時點，也就是提供商品或服務或監控當事人行為的時點，不論此供給或監控的持續時間有多長。

The EDPB considers however that, in relation to processing activities related to the offer of services, the provision is aimed at activities that intentionally, rather than inadvertently or incidentally, target individuals in the EU. Consequently, if the processing relates to a service that is only offered to individuals outside the EU but the service is not withdrawn when such individuals enter the EU, the related processing will not be subject to the GDPR. In this case the processing is not related to the intentional targeting of individuals in the EU but relates to the targeting of individuals outside the EU which will continue whether they remain outside the EU or whether they visit the Union.
然而，EDPB 認為，就與服務提供相關之運用活動而言，該規定之目的旨在規範有意以位於歐盟當事人之活動為特定目標，而非無意或偶然之情形。因此，若運用僅涉及向位於歐盟外之個人提供服務，但當該個人進入歐盟時並未撤回該服務，則相關運用將不受 GDPR 拘束。在此情況下，運用與以位於歐盟境內之個人為特

[22] Charter of Fundamental Right of the European Union, Article 8(1), « Everyone has the right to the protection of personal data concerning him or her".
歐盟基本權利憲章第8條「每個人皆有權利保護與自身相關之個人資料」。

定目標之情形無關，而是與以位於歐盟外之個人為特定目標相關，無論該個人是否留在歐盟境外抑或參訪歐盟，此種運用都將持續進行。

Example 8: An Australian company offers a mobile news and video content service, based on user's preferences and interests. Users can receive daily or weekly updates. The service is offered exclusively to users located in Australia, who must provide an Australian phone number when subscribing.
示例 8：一家澳大利亞公司依據用戶偏好和興趣提供行動新聞和影音內容服務。用戶可接收每日或每週更新。該服務是專為位於澳大利亞之用戶所提供，用戶在訂閱時必須提供澳大利亞之電話號碼。

An Australian subscriber of the service travels to Germany on holiday and continues using the service.
訂閱該服務的澳大利亞用戶在假日時前往德國旅遊，並繼續使用該服務。

Although the Australian subscriber will be using the service while in the EU, the service is not 'targeting' individuals in the Union, but targets only individuals in Australia, and so the processing of personal data by the Australian company does not fall within the scope of the GDPR.
儘管澳大利亞用戶將在歐盟境內使用該服務，但該服務並非以位於歐盟之個人「為特定目標」，而是僅以位於澳大利亞之個人為目標，因此，澳大利亞公司對個人資料之運用不屬於 GDPR 之適用範圍。

Example 9: A start-up established in the USA, without any business presence or establishment in the EU, provides a city-mapping application for tourists. The application processes personal data concerning the location of customers using the app (the data subjects) once they start using the application in the city they visit, in order to offer targeted advertisement for places to visits, restaurant, bars and hotels. The application is available for tourists while they visit New York, San Francisco, Toronto, London, Paris and Rome.
示例 9：一家設立於美國且在歐盟沒有任何商業活動或據點的新創公司，為遊客提供城市地圖的應用程式。為了向遊客提供所在城市有關旅遊地點、餐館、酒吧和旅館的針對性廣告，當用戶（當事人）開始使用地圖服務時，應用程式便會對用戶之所在位置進行個人資料運用。該應用程式提供遊客於參訪紐約、舊金山、多倫多、倫敦、巴黎和羅馬等城市時之地圖服務。

The US start-up, via its city mapping application, is specifically targeting individuals in the Union (namely in Paris and Rome) through offering its services to them when they

are in the Union. The processing of the EU-located data subjects' personal data in connection with the offering of the service falls within the scope of the GDPR as per Article 3(2)a. Furthermore, by processing data subject's location data in order to offer targeted advertisement on the basis of their location, the processing activities also relate to the monitoring of behaviour of individuals in the Union. The US start-up processing therefore also falls within the scope of the GDPR as per Article 3(2)b.
該美國新創公司透過其城市地圖應用程式，特別以歐盟境內（即巴黎和羅馬）之個人為目標，當用戶位於歐盟時為其提供服務。依據第 3 條第 2 項第 a 款，為提供其服務而運用位於歐盟境內當事人之個人資料，屬於 GDPR 之適用範圍。此外，當透過運用個資當事人之定位資料以便依據其所在地提供針對性廣告時，該運用活動亦涉及對位於歐盟境內個人行為之監控。因此，依據第 3 條第 2 項第 b 款，美國新創公司之運用活動亦屬於 GDPR 之適用範圍。

The EDPB also wishes to underline that the fact of processing personal data of an individual in the Union alone is not sufficient to trigger the application of the GDPR to processing activities of a controller or processor not established in the Union. The element of "targeting" individuals in the EU, either by offering goods or services to them or by monitoring their behaviour (as further clarified below), must always be present in addition.
EDPB 強調，對非設立於歐盟境內的控管者或受託運用者，僅以其運用位於歐盟境內個人資料的事實，尚不足以觸發 GDPR 的適用。無論係透過提供商品或服務，亦或透過監控當事人的行動（如下文進一步闡明），皆以位於歐盟之個人為「特定目標」做為額外要件。

Example 10: A U.S. citizen is travelling through Europe during his holidays. While in Europe, he downloads and uses a news app that is offered by a U.S. company. The app is exclusively directed at the U.S. market, evident by the app terms of use and the indication of US Dollar as the sole currency available for payment. The collection of the U.S. tourist's personal data via the app by the U.S. company is not subject to the GDPR.
示例 10：一個美國公民在假期間前往歐洲旅行。 在歐洲期間，他下載並使用由美國公司提供的新聞應用程式。鑑於該應用程式之使用條款及以美元為唯一可支付貨幣，該應用程式僅針對美國市場。美國公司通過應用程式蒐集美國旅客的個人資料不受 GDPR 拘束。

Moreover, it should be noted that the processing of personal data of EU citizens or residents that takes place in a third country does not trigger the application of the GDPR, as long as the processing is not related to a specific offer directed at individuals in the EU or to a monitoring of their behaviour in the Union.
再者，針對位於第三國的歐盟公民或居民所為之資料運用行為，只要該資料運用

與提供位於歐盟內當事人商品或服務或監控其行動無關，則不會觸發 GDPR 的適用。

Example 11: A bank in Taiwan has customers that are residing in Taiwan but hold German citizenship. The bank is active only in Taiwan; its activities are not directed at the EU market. The bank's processing of the personal data of its German customers is not subject to the GDPR.
示例 11：一家位於臺灣的銀行，其客戶雖居住於臺灣，但持有德國國籍。該銀行的活動範圍僅限於臺灣而非針對歐盟市場。位於臺灣的銀行運用德國客戶的個人資料不受 GDPR 拘束。

Example 12: The Canadian immigration authority processes personal data of EU citizens when entering the Canadian territory for the purpose of examining their visa application. This processing is not subject to the GDPR.
示例 12：加拿大移民署在歐盟公民進入加拿大領土時，運用歐盟公民的個人資料，以審查其簽證申請。此運用不受 GDPR 拘束。

b) Offering of goods or services, irrespective of whether a payment of the data subject is required, to data subjects in the Union
b) 對位於歐盟境內的當事人提供商品或服務，不問是否需要當事人付款

The first activity triggering the application of Article 3(2) is the "offering of goods or services", a concept which has been further addressed by EU law and case law, which should be taken into account when applying the targeting criterion. The offering of services also includes the offering of information society services, defined in point (b) of Article 1(1) of Directive (EU) 2015/1535[23] as "*any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services*".
觸發第 3 條第 2 項適用的第一種行為係「提供商品或服務」，歐盟法律和判例法進一步說明此一概念，又此行為須將特定目標準則納入考量。提供的服務也包括提供資訊社會服務（Information society service），歐盟指令 2015/1535 第 1 條第 1

[23] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.
歐洲議會和歐盟理事會於2015年9月9日所發布之第2015/1535號指令（EU），規定了在技術法規和資訊社會服務規則領域提供資訊之程序。

項 b 款定義該服務為「*以報酬為目的，在一定距離外，依據服務接受者的個人要求以電子方式提供資訊社會服務*」。

Article 3(2)(a) specifies that the targeting criterion concerning the offering of goods or services applies irrespective of whether a payment by the data subject is required. Whether the activity of a controller or processor not established in the Union is to be considered as an offer of a good or a service is not therefore dependent whether payment is made in exchange for the goods or services provided[24].
第 3 條第 2 項第 a 款特別規定，特定目標準則適用於提供商品或服務，不問是否需要當事人付款。因此，非設立於歐盟境內之控管者或受託運用者的活動，是否得被視為提供商品或服務，與是否需付費以交換該商品或服務之提供無關[24]。

Example 13: A US company, without any establishment in the EU, processes personal data of its employees that were on a temporary business trip to France, Belgium and the Netherlands for human resources purposes, in particular to proceed with the reimbursement of their accommodation expenses and the payment of their daily allowance, which vary depending on the country they are in.
示例 13：一家在歐盟沒有任何據點的美國公司，基於人力資源目的，當其員工暫時去法國、比利時和荷蘭出差時，運用此些員工之個人資料，尤其係為給付住宿費用和每日津貼，具體費用視員工所在國家而定。

In this situation, while the processing activity is specifically connected to persons on the territory of the Union (i.e. employees who are temporarily in France, Belgium and the Netherlands) it does not relate to an offer of a service to those individuals, but rather is part of the processing necessary for the employer to fulfil its contractual obligation and human resources duties related to the individual's employment. The processing activity does not relate to an offer of service and is therefore not subject to the provision of the GDPR as per Article 3(2)a.
於此情況下，雖然運用活動特定與位於歐盟境內之人員（即暫時位於法國、比利時和荷蘭之員工）相關，然該運用與向此些人員提供服務無關，而是雇主為履行與個人僱傭相關之契約義務及人力資源職責所必需之運用。該運用活動與服務提供無關，依據第 3 條第 2 項第 a 款之規定，因此不受 GDPR 之拘束。

Another key element to be assessed in determining whether the Article 3(2)(a) targeting criterion can be met is whether the offer of goods or services is directed at a person in the Union, or in other words, whether the conduct on the part of the controller, which

[24] See, in particular, CJEU, C-352/85, Bond van Adverteerders and Others vs. The Netherlands State, 26 April 1988, par. 16), and CJEU, C-109/92, Wirth [1993] Racc. I-6447, par. 15.
特別參閱歐盟法院C-352/85，Bond van Adverteerders和Others vs. The Netherlands State，1988年4月26日，段落16和歐盟法院C-109/92，Wirth [1993] Racc. I-6447，段落15。

determines the means and purposes of processing, demonstrates its intention to offer goods or a services to a data subject located in the Union. Recital 23 of the GDPR indeed clarifies that "*in order to determine whether such a controller or processor is offering goods or services to data subjects who are in the Union, it should be ascertained whether it is apparent that the controller or processor envisages offering services to data subjects in one or more Member States in the Union.*"
在確認第 3 條第 2 項 a 款特定目標準則時，另一項評估關鍵要素為，商品或服務之提供是否係針對位於歐盟境內之當事人。換句話說，決定運用方式及目的之控管者之行為是否表明其有意圖對位於歐盟的當事人提供商品或服務。GDPR 前言第 23 點闡明「*為決定控管者或受託運用者是否為歐盟境內之當事人提供商品或服務，應確認是否明顯可知該控管者或受託運用者預見其係提供服務予位於一個或多個歐盟會員國境內之當事人*」。

The recital further specifies that "*whereas the mere accessibility of the controller's, processor's or an intermediary's website in the Union, of an email address or of other contact details, or the use of a language generally used in the third country where the controller is established, is insufficient to ascertain such intention, factors such as the use of a language or a currency generally used in one or more Member States with the possibility of ordering goods and services in that other language, or the mentioning of customers or users who are in the Union, may make it apparent that the controller envisages offering goods or services to data subjects in the Union.*"
前言第 23 點進一步說明「*若僅係可接近使用控管者、受託運用者或中介者於歐盟內之網頁、電子郵件或其他聯繫方式，或使用之語言係控管者設立地之第三國所通常使用之語言，均不足以確認其具有提供商品或服務之意圖；但其他要素諸如：所使用之語言或貨幣通常係使用於一個或多個會員國境內且有以該語言訂購商品或服務之可能性，或所提及之消費者或使用者位於歐盟境內，則可能使其明顯可知控管者擬向位於歐盟境內之當事人提供商品或服務。*」

The elements listed in Recital 23 echo and are in line with the CJEU case law based on Council Regulation 44/2001[25] on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and in particular its Article 15(1)(c). In *Pammer v Reederei Karl Schlüter GmbH & Co and Hotel Alpenhof v Heller* (Joined cases C-585/08 and C-144/09), the Court was asked to clarify what it means to "direct activity" within the meaning of Article 15(1)(c) of Regulation 44/2001 (*Brussels I*). The CJEU held that, in order to determine whether a trader can be considered to be

[25] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
2000年12月22日歐盟理事會條例（EC）第44/2001號，關於民事和商業事務中管轄權以及判決之承認和執行。

"directing" its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Brussels I, the trader must have manifested its intention to establish commercial relations with such consumers. In this context, the CJEU considered evidence able to demonstrate that the trader was envisaging doing business with consumers domiciled in a Member State.

前言第23點所列舉之要素與歐盟法院基於第44/2001[25]號規則就管轄權以及承認與執行民商事判決的判例法一致，特別是第15條第1項c款之規定。在 *Pammer v Reederei Karl Schlüter GmbH & Co and Hotel Alpenhof v Heller* (合併案件 C-585/08 and C-144/09)中，法院被要求澄清第44/2001號規則（*布魯塞爾 I*）第15條第1項c款中「活動指向」（direct activity）之定義。歐盟法院認為，在布魯塞爾 I 第15條第1項c款的涵義內，為決定貿易商是否得被認定將其活動「指向」到消費者住所地之成員國，貿易商必須表明與消費者建立商業關係之意圖。在此情形下，歐盟法院認為證據足資證明貿易商預計和居住於成員國之消費者做生意。

While the notion of "directing an activity" differs from the "offering of goods or services", the EDPB deems this case law in in *Pammer v Reederei Karl Schlüter GmbH & Co and Hotel Alpenhof v Heller (Joined cases C-585/08 and C-144/09)*[26]might be of assistance when considering whether goods or services are offered to a data subject in the Union. When taking into account the specific facts of the case, the following factors could therefore *inter alia* be taken into consideration, possibly in combination with one another:

雖然「活動指向」的概念與「提供商品或服務」不同，但 EDPB 認為，*Pammer v Reederei Karl Schlüter GmbH & Co and Hotel Alpenhof v Heller (合併案件 C-585/08 and C-144/09)*[26] 一案對釐清是否向歐盟境內的當事人提供商品或服務的定義可能有所助益。因此，*除其他事項*，在考量案件之具體事實時，可交叉比對以下要素：

- The EU or at least one Member State is designated by name with reference to the good or service offered;
- 所提供之商品或服務以名稱指定歐盟或至少一個成員國為其標的；

- The data controller or processor pays a search engine operator for an internet referencing service in order to facilitate access to its site by consumers in the Union; or the controller or processor has launched marketing and advertisement campaigns

[26] It is all the more relevant that, under Article 6 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), in absence of choice of law, this criterion of "directing activity" to the country of the consumer's habitual residence is taken into account to designate the law of the consumer's habitual residence as the law applicable to the contract.
依據歐洲議會和歐盟理事會2008年6月17日第593/2008（EC）號規則第6條關於契約義務準則（羅馬I），若無法律選擇之適用，「活動指向準則」將消費者居住國納入考量，以指定消費者住所地之法律適用於契約。

directed at an EU country audience;
- 資料控管者或受託運用者向搜索引擎運營商付費取得網路參考服務，以利位於歐盟境內之消費者得造訪其網站；或控管者或受託運用者針對位於歐盟的觀眾啟動行銷和廣告活動；

- The international nature of the activity at issue, such as certain tourist activities;
- 活動的國際性質，例如特定之旅遊活動；

- The mention of dedicated addresses or phone numbers to be reached from an EU country;
- 提供位於歐盟某一國家境內可供聯繫的專用地址或電話號碼；

- The use of a top-level domain name other than that of the third country in which the controller or processor is established, for example ".de", or the use of neutral top-level domain names such as ".eu";
- 資料控管者或受託運用者未使用所在地第三國之頂級網域名稱，卻使用如「.de」，或使用中性頂級網域名稱，如「.eu」；

- The description of travel instructions from one or more other EU Member States to the place where the service is provided;
- 提供一個或多個歐盟成員國到其服務提供地的旅行指示說明；

- The mention of an international clientele composed of customers domiciled in various EU Member States, in particular by presentation of accounts written by such customers;
- 提及居住於不同歐盟成員國境內客戶組成的國際客戶，尤其是提供由此類客戶所撰寫之帳戶資料；

- The use of a language or a currency other than that generally used in the trader's country, especially a language or currency of one or more EU Member states;
- 使用貿易商所在國家以外的語言或貨幣，尤其是使用一個或多個歐盟成員國的語言或貨幣；

- The data controller offers the delivery of goods in EU Member States.
- 資料控管者提供貨物運送至歐盟成員國。

As already mentioned, several of the elements listed above, if taken alone may not amount to a clear indication of the intention of a data controller to offer goods or services to data subjects in the Union, however, they should each be taken into account in any in *concreto* analysis in order to determine whether the combination of factors relating to the data controller's commercial activities can together be considered as an

offer of goods or services directed at data subjects in the Union.
若單獨考慮前述幾項要件，可能無法清楚指出資料控管者提供位於歐盟境內當事人商品或服務之意圖。然而，在*具體分析*中，為決定資料控管者的整體商業活動是否可被視為係直接針對位於歐盟境內之當事人所提供之商品或服務，每一項要件都應列入考量範圍內。

It is however important to recall that Recital 23 confirms that the mere accessibility of the controller's, processor's or an intermediary's website in the Union, the mention on the website of its e-mail or geographical address, or of its telephone number without an international code, does not, of itself, provide sufficient evidence to demonstrate the controller or processor's intention to offer goods or a services to a data subject located in the Union. In this context, the EDPB recalls that when goods or services are inadvertently or incidentally provided to a person on the territory of the Union, the related processing of personal data would not fall within the territorial scope of the GDPR.
需再次強調，前言第 23 點確認，單純於歐盟內造訪資料控管者、受託運用者或中間商的網站，在網站上提及電子郵件或區域地址，或提及沒有國際代碼的電話號碼，皆無法提供足夠的證據來證明控管者或受託運用者有意圖對位於歐盟境內的當事人提供商品或服務。於此情況下，EDPB 重申，若無意或偶然地向位於歐盟領域內之個人提供了商品或服務，則與該個人資料相關之運用將不屬於 GDPR 之地域範圍。

Example 14: A website, based and managed in Turkey, offers services for the creation, edition, printing and shipping of personalised family photo albums. The website is available in English, French, Dutch and German and payments can be made in Euros. The website indicates that photo albums can only be delivered by post mail in the UK, France, Benelux countries and Germany.
示例 14：設立與管理皆位於土耳其的網站，為個性化家庭相冊的創建、編輯、印刷和運送提供服務。該網站提供英語、法語、荷蘭語和德語版本，且可使用歐元付款。該網站表明，相冊只能透過郵寄方式在英國、法國、比荷盧聯盟國家和德國運送。

In this case, it is clear that the creation, editing and printing of personalised family photo albums constitute a service within the meaning of EU law. The fact that the website is available in four languages of the EU and that photo albums can be delivered by post in six EU Member States demonstrates that there is an intention on the part of the Turkish website to offer its services to individuals in the Union.
在此案例中，個性化家庭相冊的創建、編輯和印刷明顯屬於歐盟法律定義上之服

務。網站提供四種於歐盟內使用的語言，相冊可郵寄於六個歐盟成員國，皆表明該土耳其網站有意圖向位於歐盟境內之個人提供服務。

As a consequence, it is clear that the processing carried out by the Turkish website, as a data controller, relates to the offering of a service to data subjects in the Union and is therefore subject to the obligations and provisions of the GDPR, as per its Article 3(2)(a).
因此，顯然該土耳其網站，作為資料控管者所執行的資料運用，涉及向歐盟境內的當事人提供服務，因此依據第 3 條第 2 項 a 款，需遵守 GDPR 的義務和規範。

In accordance with Article 27, the data controller will have to designate a representative in the Union.
依據第 27 條，資料控管者必須於歐盟境內指定代表人。

Example 15: A private company based in Monaco processes personal data of its employees for the purposes of salary payment. A large number of the company's employees are French and Italian residents.
示例 15：某位於摩納哥的私人公司為支付工資而運用其員工的個人資料。 該公司的大量員工是位於法國和義大利的居民。

In this case, while the processing carried out by the company relates to data subjects in France and Italy, it does not takes place in the context of an offer of goods or services. Indeed human resources management, including salary payment by a third-country company cannot be considered as an offer of service within the meaning of Art 3(2)a. The processing at stake does not relate to the offer of goods or services to data subjects in the Union (nor to the monitoring of behaviour) and, as a consequence, is not subject to the provisions of the GDPR, as per Article 3.
於此案例中，雖然公司執行的資料運用涉及位於法國和義大利的當事人，但該運用並不是以提供商品或服務為目的。實際上，人力資源管理，包括第三國公司工資之支付，不屬於第 3 條第 2 項 a 款所意指之服務提供。係爭運用行為與提供歐盟境內的當事人商品或服務（或行為監控）無關，因此，根據第 3 條，該運用不受 GDPR 規範之拘束。

This assessment is without prejudice to the applicable law of the third country concerned.
此評估不妨礙第三國的法律適用。

Example 16: A Swiss University in Zurich is launching its Master degree selection process, by making available an online platform where candidates can upload their CV and cover letter, together with their contact details. The selection process is open to any student with a sufficient level of German and English and holding a Bachelor degree. The University does not specifically advertise to students in EU Universities, and only takes payment in Swiss currency.

示例 16：蘇黎世的瑞士大學正推出碩士學位甄選程序，透過網站，候選人可上傳簡歷和自薦信，以及聯繫方式。甄選程序開放於任何具有合格德語和英語能力且持有學士學位的學生。該大學沒有專門向歐盟大學的學生宣傳，且只接受瑞士貨幣的支付。

As there is no distinction or specification for students from the Union in the application and selection process for this Master degree, it cannot be established that the Swiss University has the intention to target students from a particular EU member states. The sufficient level of German and English is a general requirement that applies to any applicant whether a Swiss resident, a person in the Union or a student from a third country. Without other factors to indicate the specific targeting of students in EU member states, it therefore cannot be established that the processing in question relates to the offer of an education service to data subject in the Union, and such processing will therefore not be subject to the GDPR provisions.

碩士學位的申請和甄選程序並沒有針對位於歐盟境內的學生，因此無法認定瑞士大學有意圖將特定歐盟成員國的學生列為目標。合格的德語和英語能力要件適用於任何申請人，無論是瑞士居民、歐盟申請人或是來自第三國的學生。若無其他因素表明該甄選程序係針對歐盟成員國的學生，資料的運用不得被視為涉及向位於歐盟境內之當事人提供教育服務，因此該運用不屬於 GDPR 的適用範圍。

The Swiss University also offers summer courses in international relations and specifically advertise this offer in German and Austrian universities in order to maximise the courses' attendance. In this case, there is a clear intention from the Swiss University to offer such service to data subjects who are in the Union, and the GDPR will apply to the related processing activities.

瑞士大學另外提供國際關係的暑期課程，為了大幅提高參與人數，在德國和奧地利的大學中特別宣傳此課程。在此情況下，瑞士大學明確有意圖向位於歐盟境內當事人提供此類服務，因此 GDPR 將適用於相關的運用活動。

c) Monitoring of data subjects' behaviour

c）監控當事人之行為

The second type of activity triggering the application of Article 3(2) is the monitoring of data subject behaviour as far as their behaviour takes place within the Union.
觸發第 3 條第 2 項適用之第二類活動是監控當事人位於歐盟境內所為之行為。

Recital 24 clarifies that "*[t]he processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union should also be subject to this Regulation when it is related to the monitoring of the behaviour of such data subjects in so far as their behaviour takes place within the Union.*"
前言第 24 點闡明「*凡為歐盟境內之當事人，雖由非設立於歐盟境內之控管者或受託運用者進行個人資料運用，惟其涉及對該當事人之行為所為監控且該受監控之行為係發生於歐盟境內者，本規則亦應予適用。*」

For Article 3(2)(b) to trigger the application of the GDPR, the behaviour monitored must first relate to a data subject in the Union and, as a cumulative criterion, the monitored behaviour must take place within the territory of the Union.
為第 3 條第 2 項 b 款觸發 GDPR 之適用，受監控之行為首先必須與位於歐盟境內之當事人相關，且該行為必須發生於歐盟的領土內。

The nature of the processing activity which can be considered as behavioural monitoring is further specified in Recital 24 which states that "*in order to determine whether a processing activity can be considered to monitor the behaviour of data subjects, it should be ascertained whether natural persons are tracked on the internet including potential subsequent use of personal data processing techniques which consist of profiling a natural person, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.*" While Recital 24 exclusively relates to the monitoring of a behaviour through the tracking of a person on the internet, the EDPB considers that tracking through other types of network or technology involving personal data processing should also be taken into account in determining whether a processing activity amounts to a behavioural monitoring, for example through wearable and other smart devices.
前言第 24 點進一步闡明可被視為行為監控之資料運用活動之性質。該項前言指出「*為決定該資料運用是否可受認定為監控該當事人之行為，應確認該當事人是否於網路上被追蹤，包含以個人資料運用技術對自然人進行剖析的潛在後續利用，尤其是為了作成與其有關的決策，或為分析或預測其個人偏好、行為及態度*」。雖然前言第 24 點針對涉及透過網路追蹤當事人之行為監控，但 EDPB 認為在確認運用活動是否可被視為行為監控時，亦應考量藉由其他類型的網路或技術所為之追蹤而涉及的資料運用。例如透過可穿戴和其他智能設備進行之行為監控。

As opposed to the provision of Article 3(2)(a), neither Article 3(2)(b) nor Recital 24

expressly introduce a necessary degree of "intention to target" on the part of the data controller or processor to determine whether the monitoring activity would trigger the application of the GDPR to the processing activities. However, the use of the word "monitoring" implies that the controller has a specific purpose in mind for the collection and subsequent reuse of the relevant data about an individual's behaviour within the EU. The EDPB does not consider that any online collection or analysis of personal data of individuals in the EU would automatically count as "monitoring". It will be necessary to consider the controller's purpose for processing the data and, in particular, any subsequent behavioural analysis or profiling techniques involving that data. The EDPB takes into account the wording of Recital 24, which indicates that to determine whether processing involves monitoring of a data subject behaviour, the tracking of natural persons on the Internet, including the potential subsequent use of profiling techniques, is a key consideration.

與第 3 條第 2 項 a 款的規定不同，第 3 條第 2 項 b 款和前言第 24 點在確認監控活動是否屬於資料運用而觸發 GDPR 的適用時，皆未明確規範資料控管者或受託運用者須具備必要程度的「特定目標意圖」。然而，使用「監控」一詞，意味著控管者心中有一特定目的，以蒐集和後續使用位於歐盟境內當事人行為的相關數據。EDPB 不認為任何線上蒐集或分析位於歐盟境內個人的資料皆自動視為「監控」。控管者進行資料運用之目的必須列入考量，特別是任何後續行為分析或相關資料之剖析技術。參照前言第 24 點，EDPB 認為，為了確認資料運用是否涉及監控當事人的行為，追蹤網路上的自然人，包括後續使用剖析技術之可能性，係關鍵考量要素。

The application of Article 3(2)(b) where a data controller or processor monitors the behaviour of data subjects who are in the Union could therefore encompass a broad range of monitoring activities, including in particular:

因此，第 3 條第 2 項 b 款之適用，對於資料控管者或受託運用者監控位於歐盟境內當事人之行為，可能涵蓋廣泛的監控活動，特別包括：

- Behavioural advertisement
- 行為廣告

- Geo-localisation activities, in particular for marketing purposes
- 地理定位活動，特別是針對於行銷目的

- Online tracking through the use of cookies or other tracking techniques such as fingerprinting
- 透過使用 cookie 或其他追蹤技術（如數位指紋）所進行之線上追蹤

- Personalised diet and health analytics services online
- 線上個別化飲食和健康分析服務

- CCTV
- 閉路電視

- Market surveys and other behavioural studies based on individual profiles
- 基於個人檔案所進行之市場調查和其他行為研究

- Monitoring or regular reporting on an individual's health status
- 對個人的健康狀況進行監控或定期報告

Example 17: A retail consultancy company established in the US provides advice on retail layout to a shopping centre in France, based on an analysis of customers' movements throughout the centre collected through Wi-Fi tracking.
示例 17：設立於美國的一間零售諮詢公司透過 Wi-Fi，追蹤蒐集購物中心客戶行動分析，並向位於法國的購物中心提供零售佈置設計建議。

The analysis of a customers' movements within the centre through Wi-Fi tracking will amount to the monitoring of individuals' behaviour. In this case, the data subjects' behaviour takes place in the Union since the shopping centre is located in France. The consultancy company, as a data controller, is therefore subject to the GDPR in respect of the processing of this data for this purpose as per its Article 3(2)(b).
透過 Wi-Fi 追蹤分析客戶在購物中心內的行動相當於監控個人的行為。於此案例中，由於購物中心位於法國，當事人的行為發生在歐盟境內。因此，依據第 3 條第 2 項 b 款，該作為資料控管者的諮詢公司，就前述目的所為之資料運用行為受 GDPR 拘束。

In accordance with Article 27, the data controller will have to designate a representative in the Union.
依據第 27 條，資料控管者必須於歐盟境內指定代表人。

Example 18: An app developer established in Canada with no establishment in the Union monitors the behaviour of data subject in the Union and is therefore subject to the GDPR, as per Article 3(2)b. The developer uses a processor established in the US for the app optimisation and maintenance purposes.
示例 18：依據第 3 條第 2 項 b 款，位於加拿大的應用程式開發商，雖在歐盟內未設立據點，但監控位於歐盟境內當事人的行為，屬於 GDPR 的適用範圍。 該開發商任用設立於美國的受託運用者進行應用程式的優化和維護。

In relation to this processing, the Canadian controller has the duty to only use appropriate processors and to ensure that its obligations under the GDPR are reflected in the contract or legal act governing the relation with its processor in the US, pursuant to Article 28.
就此資料運用而言，依據第 28 條，加拿大的控管者有責任僅任用適當的受託運用者，並確保其在 GDPR 下所應承擔之義務，於契約或其他法律行為中反映。

d) Processor not established in the Union
d) 非設立於歐盟境內之受託運用者

Processing activities which are “related” to the targeting activity which triggered the application of Article 3(2) fall within the territorial scope of the GDPR. The EDPB considers that there needs to be a connection between the processing activity and the offering of good or service, but both processing by a controller and a processor are relevant and to be taken into account.
當運用活動與觸發第 3 條第 2 項的活動「相關聯」時，亦屬於 GDPR 的地域範圍。EDPB 認為，運用活動與商品或服務的提供之間需有關聯性，但無論係控管者或受託運用者之運用活動，皆需納入考量範圍。

When it comes to a data processor not established in the Union, in order to determine whether its processing may be subject to the GDPR as per Article 3(2), it is necessary to look at whether the processing activities by the processor “are related” to the targeting activities of the controller.
對於非設立於歐盟境內之受託運用者，依據第 3 條第 2 項之規定，為確認其運用是否受拘束於 GDPR，則必須查看該受託運用者之運用活動是否與控管者特定目標性之活動「相關聯」。

The EDPB considers that, where processing activities by a controller relates to the offering of goods or services or to the monitoring of individuals’ behaviour in the Union

('targeting'), any processor instructed to carry out that processing activity on behalf of the controller will fall within the scope of the GDPR by virtue of Art 3(2) in respect of that processing.
EDPB 認為，若控管者之運用活動與商品或服務之提供相關或與監控位於歐盟境內個人之行為相關時（「特定目標性」），則任何受指示代表控管者進行運用活動之受託運用者，就該運用而言，依據第 3 條第 2 項，將屬於 GDPR 之適用範圍。

The 'Targeting' character of a processing activity is linked to its purposes and means; a decision to target individuals in the Union can only be made by an entity acting as a controller. Such interpretation does not rule out the possibility that the processor may actively take part in processing activities related to carrying out the targeting criteria (i.e. the processor offers goods or services or carries out monitoring actions on behalf of, and on instruction from, the controller).
運用活動之「特定目標性」特徵與其運用之目的和方式相關；僅有作為控管者之實體，得作出以位於歐盟之個人為目標的決定。此種解釋並不排除受託運用者可能積極參與和執行與目標性準則相關運用活動之可能性。（意即，受託運用者代表控管者並依據其指示提供商品或服務，或執行監控行為）。

The EDPB therefore considers that the focus should be on the connection between the processing activities carried out by the processor and the targeting activity undertaken by a data controller.
因此，EDPB 認為重點應放置於受託運用者所執行之運用活動與資料控管者所執行之特定目標性活動間之關聯性。

Example 19: A Brazilian company sells food ingredients and local recipes online, making this offer of good available to persons in the Union, by advertising these products and offering the delivery in the France, Spain and Portugal. In this context, the company instructs a data processor also established in Brazil to develop special offers to customers in France, Spain and Portugal on the basis of their previous orders and to carry out the related data processing.
示例 19：一家巴西公司在網上出售食材和當地食譜，透過對此些產品之廣告，向位於歐盟境內之個人提供此些商品，並在法國、西班牙和葡萄牙提供送貨服務。在此種情況下，該公司指示同樣設立於巴西之資料受託運用者，依據先前訂購資料，向位於法國、西班牙和葡萄牙之客戶提供特別優惠，並執行相關資料運用。

Processing activities by the processor, under the instruction of the data controller, are related to the offer of good to data subject in the Union. Furthermore, by developing these customized offers, the data processor directly monitors data subjects in the EU.

Processing by the processor are therefore subject to the GDPR, as per Article 3(2).
受託運用者在資料控管者指示下執行之運用活動，與向位於歐盟境內之資料當事人提供商品相關聯。此外，透過建立此些客製化之優惠，資料受託運用者可直接監控位於歐盟境內之資料當事人。因此，依據第 3 條第 2 項，受託運用者所為之運用受 GDPR 所拘束。

Example 20: A US company has developed a health and lifestyle app, allowing users to record with the US company their personal indicators (sleep time, weight, blood pressure, heartbeat, etc …). The app then provide users with daily advice on food and sport recommendations. The processing is carried out by the US data controller. The app is made available to, and is used by, individuals in the Union. For the purpose of data storage, the US company uses a processor established in the US (cloud service provider)
示例 20：一家美國公司開發了一個健康和生活方式應用程式，該程式允許用戶向美國公司記錄其個人指標項目（睡眠時間、體重、血壓、心跳等）。該應用程式而後每日為用戶提供有關食物和運動之建議。該應用程式可提供予且亦被位於歐盟境內之個人使用。為進行資料存儲，該美國公司使用設立於美國境內之受託運用者（雲端服務提供者）

To the extent that the US company is monitoring the behaviour of individuals in the EU, in operating the health and lifestyle app it will be 'targeting' individuals in the EU and its processing of the personal data of individuals in the EU will fall within the scope of the GDPR under Art 3(2).
在美國公司監控位於歐盟境內個人行為之程度上，當操作健康和生活方式應用程式時，該公司將以歐盟境內之個人「為特定目標」，且其運用歐盟境內個人之資料將依據第 3 條第 2 項屬於 GDPR 之適用範圍。

In carrying out the processing on instructions from, and on behalf of, the US company the cloud provider/processor is carrying out a processing activity 'relating to' the targeting of individuals in the EU by its controller. This processing activity by the processor on behalf of its controller falls within the scope of the GDPR under Art 3(2).
在依美國公司之指示並代表美國公司執行運用時，雲端提供商/受託運用者正在執行與其控管者以位於歐盟境內個人為目標所為之運用活動相關聯。受託運用者代表其控管者所為之運用活動依據第 3 條第 2 項屬於 GDPR 之適用範圍。

Example 21: A Turkish company offers cultural package travels in the Middle East with tour guides speaking English, French and Spanish. The package travels are notably advertised and offered through a website available in the three languages, allowing for online booking and payment in Euros and GBP. For marketing and commercial prospection purposes, the company instructs a data processor, a call center, established in Tunisia to contact former customers in Ireland, France, Belgium and Spain in order to get feedback on their previous travels and inform them about new offers and destinations. The controller is 'targeting' by offering its services to individuals in the EU and its processing will fall within the scope of Art 3(2).

示例 21：一家土耳其公司在中東提供文化套餐旅行，其導遊會講英語、法語和西班牙語。該套餐旅行特別以三種語言透過網站進行廣告宣傳和提供服務，且允許以歐元和英鎊線上預訂和付款。為了進行市場行銷和商業勘查，該公司指示設立於突尼西亞之資料受託運用者(一間電話服務中心)，與位於愛爾蘭、法國、比利時及西班牙之先前客戶進行聯繫，以獲取有關其從前旅遊之反饋意見，並告知此些客戶新的優惠和旅遊目的地。控管者透過「特定目標性」，向位於歐盟境內之個人提供服務，其運用將屬於第 3 條第 2 項之適用範圍。

The processing activities of the Tunisian processor, which promotes the controllers' services towards individuals in the EU, is also related to the offer of services by the controller and therefore falls within the scope of Art 3(2). Furthermore, in this specific case, the Tunisian processor actively takes part in processing activities related to carrying out the targeting criteria, by offering services on behalf of, and on instruction from, the Turkish controller.

突尼西亞受託運用者之運用活動，向位於歐盟境內之個人推展了控管者之服務，也與控管者所提供之服務相關，因此屬於第 3 條第 2 項之範圍。此外，在此種特定情況下，突尼西亞受託運用者透過代表土耳其控管者並依據其指示提供服務，積極參與及執行與特定目標準則相關之運用活動。

e) Interaction with other GDPR provisions and other legislations

e）與其他 GDPR 規則及其他法規之相互作用

The EDPB will also further assess the interplay between the application of the territorial scope of the GDPR as per Article 3 and the provisions on international data transfers as per Chapter V. Additional guidance may be issued in this regard, should this be necessary.

EDPB 亦將進一步評估第 3 條 GDPR 領域範圍之適用與第 5 章國際資料傳輸規範間之相互影響。若有必要，可於此面向發布其他指引。

Controllers or processors not established in the EU will be required to comply with their own third country national laws in relation to the processing of personal data. However, where such processing relates to the targeting of individuals in the Union as per Article 3(2) the controller will, in addition to being subject to its country's national law, be required to comply with the GDPR. This would be the case regardless of whether the processing is carried out in compliance with a legal obligation in the third country or simply as a matter of choice by the controller.

非設立於歐盟境內之控管者或受託運用者將被要求於運用個人資料時遵守其自身之第三國法規。然而，依據第 3 條第 2 項，若此類運用涉及以位於歐盟境內之個人為特定目標，除須遵守其自身國家之國內法規，控管者亦須遵守 GDPR。無論運用係依據第三國之法律義務亦或僅係由控管者之選擇而執行，皆須遵守此規範。

3. PROCESSING IN A PLACE WHERE MEMBER STATE LAW APPLIES BY VIRTUE OF PUBLIC INTERNATIONAL LAW

成員國法律依國際公法可得適用領域內所為之個人資料運用

Article 3(3) provides that "*[t]his Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law*". This provision is expanded upon in Recital 25 which states that "*[w]here Member State law applies by virtue of public international law, this Regulation should also apply to a controller not established in the Union, such as in a Member State's diplomatic mission or consular post.*"

第 3 條第 3 項規定，「*本規則適用於設立在非歐盟境內，但依國際公法而適用成員國法律之領域的控管者所為之個人資料運用*」。前言第 25 點闡述第 3 條第 3 款之適用，該前言指出「*凡成員國法律依國際公法可得適用之領域，本規則亦應適用於非設立於歐盟境內之控管者，諸如成員國之大使館或領事館*」。

The EDPB therefore considers that the GDPR applies to personal data processing carried out by EU Member States' embassies and consulates located outside the EU as such processing falls within the scope of the GDPR by the virtue of Article 3(3). A Member State's diplomatic or consular post, as a data controller or processor, would then be subject to all relevant provisions of the GDPR, including when it comes to the rights of the data subject, the general obligations related to controller and processor and the transfers of personal data to third countries or international organisations.

因此，EDPB 認為，依據第 3 條第 3 項，若歐盟成員國位於歐盟境外之大使館和領事館所為之個人資料運用屬於 GDPR 之實質範圍，GDPR 即適用於該個人資料運

用。成員國的外交或領事館，作為資料控管者或受託運用者，將受 GDPR 所有相關規定拘束，包括當事人權利、控管者和受託運用者之一般義務以及將個人資料傳輸至第三國或國際組織。

Example 22: The Dutch consulate in Kingston, Jamaica, opens an online application process for the recruitment of local staff in order to support its administration.
示例 22：位在牙買加金斯敦的荷蘭領事館，為支援其行政管理，架設了一個在線申請流程，用於招聘當地員工。

While the Dutch consulate in Kingston, Jamaica, is not established in the Union, the fact that it is a consular post of an EU country where Member State law applies by virtue of public international law renders the GDPR applicable to its processing of personal data, as per Article 3(3).
雖然荷蘭牙買加金斯敦的領事館非設立於歐盟境內，但基於國際公法，該成員國之法律適用於國家之領事館，依據第 3 條第 3 項，領事館所為之個人資料運用屬於 GDPR 之適用範圍。

Example 23: A German cruise ship travelling in international waters is processing data of the guests on board for the purpose of tailoring the in-cruise entertainment offer.
示例 23：為提供客製化的郵輪娛樂項目，德國郵輪航行在國際水域時對船上客人進行資料運用。

While the ship is located outside the Union, in international waters, the fact that it is German- registered cruise ship means that by virtue of public international law the GDPR shall be applicable to its processing of personal data, as per Article 3(3).
雖然該郵輪非位於歐盟境內，然依據國際公法以及 GDPR 第 3 條第 3 項之規範，在德國註冊郵輪上所為之個人資料運用屬於 GDPR 之適用範圍。

Though not related to the application of Article 3(3), a different situation is the one where, by virtue of international law, certain entities, bodies or organisations established in the Union benefit from privileges and immunities such as those laid down in the Vienna Convention on Diplomatic Relations of 1961[27], the Vienna Convention on Consular Relations of 1963 or headquarter agreements concluded between international organisations and their host countries in the Union. In this regard, the EDPB recalls that the application of the GDPR is without prejudice to the provisions of international law, such as the ones governing the privileges and immunities of non-EU diplomatic

[27] http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

missions and consular posts, as well as international organisations. At the same time, it is important to recall that any controller or processor that falls within the scope of the GDPR for a given processing activity and that exchanges personal data with such entities, bodies and organisations have to comply with the GDPR, including where applicable its rules on transfers to third countries or international organisations.
儘管與第 3 條第 3 項之適用無關，然另一種情況為，根據國際法，設立於歐盟境內之某些實體、機構或組織會受益於某些特權及豁免，諸如 1961 年之「維也納外交關係公約」[27]、1963 年之「維也納領事關係公約」或國際組織與歐盟成員國間締結之總部協定。於此情況下，EDPB 重申，GDPR 之適用並不影響國際法之規定，例如有關非歐盟外交使團和領事館以及國際組織特權及豁免之規定。同時，亦必須強調者為，任何屬於 GDPR 適用範圍之控管者或受託運用者，與上述實體、機構和組織就系爭運用活動交換個人資料時須遵守 GDPR，包括適用向第三國或國際組織傳輸資料之規則。

4. REPRESENTATIVE OF CONTROLLERS OR PROCESSORS NOT ESTABLISHED IN THE UNION
非設立於歐盟境內控管者或受託運用者之代表

Data controllers or processors subject to the GDPR as per its Article 3(2) are under the obligation to designate a representative in the Union. A controller or processor not established in the Union but subject to the GDPR failing to designate a representative in the Union would therefore be in breach of the Regulation.
依據第 3 條第 2 項，受 GDPR 管轄之資料控管者或受託運用者有義務於歐盟境內指定代表。未設立於歐盟境內但受拘束於 GDPR 之控管者或受託運用者，若未能於歐盟內指定代表，將違反 GDPR。

This provision is not entirely new since Directive 95/46/EC already provided for a similar obligation. Under the Directive, this provision concerned controllers not established on Community territory that, for purposes of processing personal data, made use of equipment, automated or otherwise, situated on the territory of a Member State. The GDPR imposes an obligation to designate a representative in the Union to any controller or processor falling under the scope of Article 3(2), unless they meet the exemption criteria as per Article 27(2). In order to facilitate the application of this specific provision, the EDPB deems it necessary to provide further guidance on the designation process, establishment obligations and responsibilities of the representative in the Union as per Article 27.
指令 95/46 / EC 亦有類似義務的規定。依據指令，該條款涉及未設立於歐盟境內之控管者，使用位於成員國領土內之自動化或其他設備運用個人資料。除符合第 27

條第 2 項之豁免標準外，任何屬於第 3 條第 2 項適用範圍內之控管者或受託運用者，GDPR 規定其有義務於歐盟境內指定代表。為便利執行此具體規範，EDPB 認為有必要依據第 27 條，就位於歐盟代表之指定程序、設立義務和責任提供進一步指導。

It is worth noting that a controller or processor not established in the Union who has designated in writing a representative in the Union, in accordance with article 27 of the GDPR, does not fall within the scope of article 3(1), meaning that the presence of the representative within the Union does not constitute an "establishment" of a controller or processor by virtue of article 3(1).
值得注意的是，依據 GDPR 第 27 條，非設立於歐盟境內之控管者或受託運用者在歐盟所指定之代表，不屬於第 3 條第 1 項之適用範圍。意即，依據第 3 條第 1 項，位於歐盟內之代表，並不構成控管者或受託運用者所設之「據點」。

a) Designation of a representative
a）指定代表

Recital 80 clarifies that "*[t]he representative should be explicitly designated by a written mandate of the controller or of the processor to act on its behalf with regard to its obligations under this Regulation. The designation of such a representative does not affect the responsibility or liability of the controller or of the processor under this Regulation. Such a representative should perform its tasks according to the mandate received from the controller or processor, including cooperating with the competent supervisory authorities with regard to any action taken to ensure compliance with this Regulation.*"
前言第 80 點闡明「*控管者或受託運用者應明確以書面委託代表履行其依照本規則所負之義務。該指定不影響控管者或受託運用者基於本規則所應負之責任或負擔。該代表應依據控管者或受託運用者之委託執行其任務，包括為確保符合本規則而需與主管機關合作之任何作為*」。

The written mandate referred to in Recital 80 shall therefore govern the relations and obligations between the representative in the Union and the data controller or processor established outside the Union, while not affecting the responsibility or liability of the controller or processor. The representative in the Union may be a natural or a legal person established in the Union able to represent a data controller or processor established outside the Union with regard to their respective obligations under the GDPR.
因此，前言第 80 點所提及之書面授權，規範位於歐盟境內之代表與位於歐盟外之

資料控管者或受託運用者間之關係和義務，且不影響控管者或受託運用者之責任或負擔。位於歐盟內之代表可以是在歐盟的自然人或法人，代表設立於歐盟外之資料控管者或受託運用者，履行其各自在 GDPR 下之義務。

In practice, the function of representative in the Union can be exercised based on a service contract concluded with an individual or an organisation, and can therefore be assumed by a wide range of commercial and non-commercial entities, such as law firms, consultancies, private companies, etc... provided that such entities are established in the Union. One representative can also act on behalf of several non-EU controllers and processors.
實務上，歐盟代表之運作可依據與個人或公司簽訂之服務契約行使，因此可以廣泛指定位於歐盟內之商業和非商業實體作為代表，例如律師事務所、諮詢公司和私人公司等。一個實體可同時代表數個非位於歐盟境內之控管者和受託運用者。

When the function of representative is assumed by a company or any other type of organisation, it is recommended that a single individual be assigned as a lead contact and person "in charge" for each controller or processor represented. It would generally also be useful to specify these points in the service contract.
當代表之運作由公司或任何其他類型組織執行時，建議應指派單一個人作為主要聯繫人，並為所代表之控管者或受託運用者「負責」。一般而言，於服務契約中載明這些重點是有用的。

In line with the GDPR, the EDPB confirms that, when several processing activities of a controller or processor fall within the scope of Article 3(2) GDPR (and none of the exceptions of Article 27(2) GDPR apply), that controller or processor is not expected to designate several representatives for each separate processing activity falling within the scope of article 3(2). The EDPB does not consider the function of representative in the Union as compatible with the role of an external data protection officer ("DPO") which would be established in the Union. Article 38(3) establishes some basic guarantees to help ensure that DPOs are able to perform their tasks with a sufficient degree of autonomy within their organisation. In particular, controllers or processors are required to ensure that the DPO "*does not receive any instructions regarding the exercise of [his or her] tasks*". Recital 97 adds that DPOs, "*whether or not they are an employee of the controller, should be in a position to perform their duties and tasks in an independent manner*"[28]. Such requirement for a sufficient degree of autonomy and independence of a

[28] WP29 Guidelines on Data Protection Officers ('DPOs'), WP 243 rev.01.
WP29個資保護長指引，WP 243 rev.01。

data protection officer does not appear to be compatible with the function of representative in the Union. The representative is indeed subject to a mandate by a controller or processor and will be acting on its behalf and therefore under its direct instruction[29]. The representative is mandated by the controller or processor it represents, and therefore acting on its behalf in exercising its task, and such a role cannot be compatible with the carrying out of duties and tasks of the data protection officer in an independent manner.

為符合 GDPR，EDPB 確認，當控管者或受託運用者數項運用活動均屬於 GDPR 第 3 條第 2 項之適用範圍內（且 GDPR 第 27 條第 2 項之例外情況均不適用）時，該控管者或受託運用者不被期待就每一個屬於第 3 條第 2 項範圍內之單獨運用活動皆指派數位代表。EDPB 不認為歐盟代表的功能與設立於歐盟境內之外部個資保護長的作用一致。第 38 條第 3 項為確保個資保護長能在其組織內有足夠之自主權執行職務，規定了相關基本保障。尤其是要求控管者或受託運用者須確保個資保護長「*免於接受任何有關執行（其）任務之指示*」。前言第 97 點另補充，個資保護長「*無論是否受僱於控管者，都應該能以獨立方式執行其職責和任務*」[28]。個資保護長需具備足夠程度之自主權和獨立性的要件似乎與歐盟代表之功能不相符。歐盟代表確實需要控管者或受託運用者之授權，受其直接指示，代表其行事。[29] 該代表受其所代表之控管者或受託運用者之委託，因此代表其執行任務，而此種角色與以獨立方式履行職責和任務之個資保護長不相同。

Furthermore, and to complement its interpretation, the EDPB recalls the position already taken by the WP29 stressing that "*a conflict of interests may also arise for example if an external DPO is asked to represent the controller or processor before the Courts in cases involving data protection issues*"[30].

此外，作為補充解釋，EDPB 檢視 WP29 所採行之立場，強調「*若在涉及資料保護案件中，要求個資保護長於法庭上代表控管者或受託運用者，則有利益衝突之可能*」[30]。

Similarly, given the possible conflict of obligation and interests in cases of enforcement proceedings, the EDPB does not consider the function of a data controller representative in the Union as compatible with the role of data processor for that same data controller, in particular when it comes to compliance with their respective responsibilities and compliance.

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[29] An external DPO also acting as representative in the Union could for example be in a situation where he is instructed to communicate to a data subject a decision or measure taken by the controller or processor which he or she had deemed uncompliant with the provisions of the GDPR and advised against.
外部個資保護長同時作為歐盟代表時，可能發生一種情況，例如當個資保護長被指示向當事人傳達控管者或受託運用者的決定或措施時，該個資保護長反對並認為此決定或措施不符合GDPR之規範。

[30] WP29 Guidelines on Data Protection Officers ('DPOs'), WP 243 rev.01.
WP29個資保護長指引，WP 243 rev.01。

同樣地，鑑於在執法程序中可能存在之義務和利益衝突，EDPB 不認為，資料控管者位於歐盟境內之代表，其功能與隸屬同一資料控管者之資料受託運用者的角色相容。尤其是在遵守其各自之責任及合規性之面向上。

While the GDPR does not impose any obligation on the data controller or the representative itself to notify the designation of the latter to a supervisory authority, the EDPB recalls that, in accordance with Articles 13(1)a and 14(1)a, as part of their information obligations, controllers shall provide data subjects information as to the identity of their representative in the Union. This information shall for example be included in the [privacy notice and] upfront information provided to data subjects at the moment of data collection. A controller not established in the Union but falling under Article 3(2) and failing to inform data subjects who are in the Union of the identity of its representative would be in breach of its transparency obligations as per the GDPR. Such information should furthermore be easily accessible to supervisory authorities in order to facilitate the establishment of a contact for cooperation needs.

雖然 GDPR 並無施加義務予資料控管者或代表本身將其代表之身分通知監管機關，但 EDPB 引用第 13 條第 1 項 a 款和第 14 條第 1 項 a 款，認為依據控管者提供資訊之義務，控管者應提供當事人其歐盟代表之身分資訊。例如，該資訊應包含於資料蒐集時提供給當事人的[隱私聲明及]前置資訊中。非設立於歐盟境內但屬於第 3 條第 2 項適用範圍之控管者，若未向為當事人通知其代表人身分，將違反 GDPR 的透明義務。此外，監管機關應易於取得此類資訊，以便在合作需求上建立聯繫方式。

Example 24: The website referred to in example 12, based and managed in Turkey, offers services for the creation, edition, printing and shipping of personalised family photo albums. The website is available in English, French, Dutch and German and payments can be made in Euros or Sterling. The website indicates that photo albums can only be delivered by post mail in the France, Benelux countries and Germany. This website being subject to the GDPR, as per its Article 3(2)(a), the data controller must designate a representative in the Union.

示例 24：示例 12 提及之設立與管理皆位於土耳其的網站，為個性化家庭相冊的創建、編輯、印刷和運送提供服務。該網站提供英語、法語、荷蘭語和德語版本，且可用歐元或英鎊付款。 該網站表明，相冊只能通過郵寄方式在英國、法國、比荷盧聯盟國家和德國發送。該網站受 GDPR 約束，因此，依據第 3 條第 2 項 a 款，資料控管者必須在歐盟境內指定一名代表。

The representative must be established in one of the Member States where the service offered is available, in this case either in France, Belgium, Netherlands, Luxembourg or

Germany. The name and contact details of the data controller and its representative in the Union must be part of the information made available online to data subjects once they start using the service by creating their photo album. It must also appear in the website general privacy notice.
代表必須設立於服務提供所在地的成員國之一。在上述案例中，代表必須位於英國、法國、比利時、荷蘭、盧森堡或德國之其中一國。在當事人開始使用服務建立相冊時，資料控管者及其位於歐盟境內之代表的名稱和聯繫方式必須是線上資訊的一部分，且需註明於網站的一般隱私權聲明中。

b) Exemptions from the designation obligation[31]
b) 指定義務之免除 [31]

While the application of Article 3(2) triggers the obligation to designate a representative in the Union for controllers or processors established outside the Union, Article 27(2) foresees derogation from the mandatory designation of a representative in the Union, in two distinct cases:
雖然第 3 條第 2 項規定位於歐盟外之控管者或受託運用者需於歐盟境內指定代表，但第 27 條第 2 項列出在兩種不同的情況下，得克減該強制指定歐盟代表之義務：

- processing is "occasional, does not include, on a large scale, processing of special categories of data as referred to in Article 9(1) or processing of personal data relating to criminal convictions and offences referred to in Article 10", and such processing "is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing".
  資料運用係「偶然性之運用，不包括大規模運用第 9 條第 1 項所定之特殊類型個人資料或運用依第 10 條所定關於前科及犯罪之個人資料」，且「考量到運用之本質、過程、範圍與目的，不會對當事人之權利或自由造成風險者」。

In line with positions taken previously by the Article 29 Working Party, the EPDB considers that a processing activity can only be considered as "occasional" if it is not carried out regularly, and occurs outside the regular course of business or activity of the

[31] Part of the criteria and interpretation laid down in G29WP243 (Data Protection Officer) – endorsed by the EDPB can be used as a basis for the exemptions to the designation obligation.
由EDPB採認之G29WP243（個資保護長）中部分的標準和解釋可作為指定義務免除之基礎。

controller or processor[32].

依據 29 條工作小組先前之立場，EPDB 認為，運用活動只有在不定期執行且發生於控管者或受託運用者正常業務或活動範圍之外時，始可被視為「偶然」[32]。

Furthermore, while the GDPR does not define what constitutes large-scale processing, the WP29 has previously recommended in its guidelines WP243 on data protection officers (DPOs) that the following factors, in particular, be considered when determining whether the processing is carried out on a large scale: the number of data subjects concerned - either as a specific number or as a proportion of the relevant population; the volume of data and/or the range of different data items being processed; the duration, or permanence, of the data processing activity; the geographical extent of the processing activity[33].

此外，雖然 GDPR 沒有定義大規模運用之構成要件，但 WP29 在關於個資保護長（DPOs）指引 WP243 中建議，為確認該行為是否為大規模運用時，應考慮下列要素：相關當事人的數量 – 特定數量或相對人口數比例；資料運用量/或運用不同資料項目的範圍；資料運用活動所持續之時間或永久性；運用活動的地域性[33]。

Finally, the EDPB highlights that the exemption from the designation obligation as per Article 27 refers to processing "unlikely to result in a risk to the rights and freedoms of natural persons"[34], thus not limiting the exemption to processing unlikely to result in a high risk to the rights and freedoms of data subjects. In line with Recital 75, when assessing the risk to the rights and freedom of data subjects, considerations should be given to both the likelihood and severity of the risk.

最後，EDPB 強調，第 27 條中對指定義務之免除係指「不太可能對自然人權利和自由造成風險」[34]之運用，因此，免除不僅限於對個資當事人權利和自由造成高風險之運用。依據前言第 75 點，在評估個資當事人權利和自由之風險時，應考量該風險之可能性和嚴重性。

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[32] WP29 position paper on the derogations from the obligation to maintain records of processing activities pursuant to Article 30(5) GDPR.
WP29關於GDPR第30條第5項的維護運用活動紀錄義務之例外的立場文件。

[33] WP 29 guidelines on data protections officers (DPOs), adopted on 13th December 2016, as last revised on 5th April 2017, WP 243 rev.01 – endorsed by the EDPB.
WP29個資保護長指引，2016年12月13日通過， 2017年4月5日最後修訂，WP 243 rev.01- 由EDPB採認 。

[34] Article 27(2)(a) GDPR.
GDPR第27條第2項第a款。

Or
或者

- processing is carried out "by a public authority or body".
  資料運用係由「公務機關或機構」執行。

The qualification as a "public authority or body" for an entity established outside the Union will need to be assessed by supervisory authorities *in concreto* and on a case by case basis.[35] The EDPB notes that, given the nature of their tasks and missions, cases where a public authority or body in a third country would be offering goods or services to data subject in the Union, or would monitor their behaviour taking place within the Union, are likely to be limited.
就成立於歐盟外之實體，其作為「公務機關或機構」之資格將需由監管機關*具體*評估，並視個案情況而定[35]。EDPB 指出，鑑於其作業和任務之性質，在某些情況下，當第三國之公務機關或機構向位於歐盟境內之個資當事人提供商品或服務，或監控其在歐盟境內之行為時，可能會受到限制。

c) Establishment in one of the Member States where the data subjects whose personal data are processed
c) 代表應設立於運用活動所涉及之當事人所在的成員國境內

Article 27(3) foresees that "the representative shall be established in one of the Member States where the data subjects, whose personal data are processed in relation to the offering of goods or services to them, or whose behaviour is monitored, are". In cases where a significant proportion of data subjects whose personal data are processed are located in one particular Member State, the EDPB recommends, as a good practice, that the representative is established in that same Member State. However, the representative must remain easily accessible for data subjects in Member States where it is not established and where the services or goods are being offered or where the behaviour is being monitored.
第 27 條第 3 項規定「當運用活動涉及對當事人提供貨品或服務或監控其行為者，代表應設立於當事人所在之一成員國境內」。若運用活動所涉及之當事人大部分

[35] The GDPR does not define what constitutes a 'public authority or body'. The EDPB considers that such a notion is to be determined under national law. Accordingly, public authorities and bodies include national, regional and local authorities, but the concept, under the applicable national laws, typically also includes a range of other bodies governed by public law.
GDPR並無定義構成「公務機關或機構」之要件。EDPB認為，此一概念應依據國家法律加以確認。因此，公務機關和機構包括國家、地區和地方當局，但是依據所適用之國家法律，此概念通常亦包括一系列受公共法規管轄之其他機構。

位於某一特定成員國，作為良好的實踐，EDPB 建議代表應設立於該成員國境內。然而，若其他提供貨品或服務或監控行為之成員國未有指定代表，代表必須使該地之當事人可與之輕易取得聯繫。

The EDPB confirms that the criterion for the establishment of the representative in the Union is the location of data subjects whose personal data are being processed. The place of processing, even by a processor established in another Member State, is here not a relevant factor for determining the location of the establishment of the representative.
EDPB 確認，運用活動所涉及個資當事人的位置係設立歐盟代表之標準。至於該運用發生之地點則非決定代表設立地點之要素，即使該資料運用是由位於另一成員國境內之受託運用者所為。

Example 25: An Indian pharmaceutical company, with neither business presence nor establishment in the Union and subject to the GDPR as per Article 3(2), sponsors clinical trials carried out by investigators (hospitals) in Belgium, Luxembourg and the Netherlands. The majority of patients participating to the clinical trials are situated in Belgium.
示例 25：一家印度製藥公司，在歐盟境內沒有商業活動或設立據點，但贊助位於比利時、盧森堡和荷蘭調查員（醫院）所實行的臨床試驗，依第 3 條第 2 項之規定，屬於 GDPR 的適用範圍。大部分受試患者位於比利時。

The Indian pharmaceutical company, as a data controller, shall designate a representative in the Union established in one of the three Member States where patients, as data subjects, are participating to the clinical trial (Belgium, Luxembourg or the Netherlands). Since most patients are Belgian residents, it is recommended that the representative is established in Belgium. Should this be the case, the representative in Belgium should however be easily accessible to data subjects and supervisory authorities in the Netherlands and Luxembourg.
印度製藥公司作為資料控管者，應在病患（當事人）參與臨床試驗的三個成員國之一（比利時，盧森堡或荷蘭）指定歐盟代表。由於大多數病患為比利時居民，因此建議該代表應設立於比利時。於此情形，位於盧森堡或荷蘭的當事人和監管機關應可輕易地與位於比利時之代表聯繫。

In this specific case, the representative in the Union could be the legal representative of the sponsor in the Union, as per Article 74 of Regulation (EU) 536/2014 on clinical trials, provided that it does not act as a data processor on behalf of the clinical trial sponsor, that it is established in one of the three Member States, and that both functions are governed by and exercised in compliance with each legal framework.
在此特定案件中，依臨床試驗的規則（歐盟）536/2014 第 74 條，位於歐盟之代表可以是贊助商位於歐盟之法定代理人，然其不得作為資料受託運用者，代表臨床試驗贊助商，並須設立於三個成員國之一，且二者之功能皆須受拘束於且符合各自之法律架構。

d) Obligations and responsibilities of the representative
d）代表的義務及責任

The representative in the Union acts on behalf of the controller or processor it represents with regard to the controller or processor's obligations under the GDPR. This implies notably the obligations relating to the exercise of data subject rights, and in this regard and as already stated, the identity and contact details of the representative must be provided to data subjects in accordance with articles 13 and 14. While not itself responsible for complying with data subject rights, the representative must facilitate the communication between data subjects and the controller or processor represented, in order to make the exercise of data subjects' rights are effective.
位於歐盟的代表須代理履行資料控管者或受託運用者在 GDPR 下之義務，尤其是與當事人行使權利相關之義務。如上所述，需依據第 13 條和第 14 條，向當事人提供代表之身分和聯繫方式。代表雖不負維護當事人權利之責任，但必須促進當事人與其所代表之控管者或受託運用者間的溝通，以便當事人權利得有效實現。

As per Article 30, the controller or processor's representative shall in particular maintain a record of processing activities under the responsibility of the controller or processor. The EDPB considers that, while the maintenance of this record is an obligation imposed on both the controller or processer and the representative, the controller or processor not established in the Union is responsible for the primary content and update of the record and must simultaneously provide its representative with all accurate and updated information so that the record can also be kept and made available by the representative at all time. At the same time, it is the representative´s own responsibility to be able to provide it in line with Article 27, e.g. when being addressed by a

supervisory authority according to Art. 27(4).
依據第 30 條，就控管者或受託運用者所負責之運用活動，其代表應特別維護相關之活動記錄。EDPB 認為，當維護紀錄是控管者或受託運用者以及雙方代表之義務，非成立於歐盟境內之控管者或受託運用者負責主要內容並更新所有紀錄，且須同時提供其代表所有準確和更新之資訊，以便其隨時保留及提供活動紀錄。同時，代表有責任符合第 27 條之規定，例如依據第 27 條第 4 項，回應監管機構之要求。

As clarified by recital 80, the representative should also perform its tasks according to the mandate received from the controller or processor, including cooperating with the competent supervisory authorities with regard to any action taken to ensure compliance with this Regulation. In practice, this means that a supervisory authority would contact the representative in connection with any matter relating to the compliance obligations of a controller or processor established outside the Union, and the representative shall be able to facilitate any informational or procedural exchange between a requesting supervisory authority and a controller or processor established outside the Union.
如前言第 80 點所闡述，代表須依據控管者或受託運用者之委託執行其任務，包括為確保符合本規則而需與監管機關合作之任何作為。實際上，監管機關會就與非設立於歐盟內之控管者或受託運用者履行義務有關的任何事項聯繫其代表，且該代表應有能力促成監管機關與設立於歐盟境外之控管者或受託運用者間的任何資訊或程序交換。

With the help of a team if necessary, the representative in the Union must therefore be in a position to efficiently communicate with data subjects and cooperate with the supervisory authorities concerned. This means that this communication should in principle take place in the language or languages used by the supervisory authorities and the data subjects concerned or, should this result in a disproportionate effort, that other means and techniques shall be used by the representative in order to ensure the effectiveness of communication. The availability of a representative is therefore essential in order to ensure that data subjects and supervisory authorities will be able to establish contact easily with the non-EU controller or processor. In line with Recital 80 and Article 27(5), the designation of a representative in the Union does not affect the responsibility and liability of the controller or of the processor under the GDPR and shall be without prejudice to legal actions which could be initiated against the controller or the processor themselves. The GDPR does not establish a substitutive liability of the representative in place of the controller or processor it represents in the Union.
必要時，在團隊合作下，歐盟代表必須能夠有效地與當事人進行溝通，並與相關

監管機關合作。這表示原則上該溝通所使用之語言，需與監管機關或個資當事人所使用之語言相同，或者，若如此會造成不符合比例原則之效能時，則該代表應使用其他方式和技術，以確保溝通之有效性。因此，代表的聯繫便利性對確保當事人和監管機關能夠與非設立於歐盟境內之控管者或受託運用者建立聯繫管道至關重要。依據前言第 80 點和第 27 條第 5 項，在歐盟中指定代表並不影響控管者或受託運用者在 GDPR 中應承擔的責任和義務，且應無礙於對該控管者或受託運用者本人提起訴訟。GDPR 並未就其在歐盟所代表之控管者或受託運用者建立代表之替代責任。

It should however be noted that the concept of the representative was introduced precisely with the aim of facilitating the liaison with and ensuring effective enforcement of the GDPR against controllers or processors that fall under Article 3(2) of the GDPR. To this end, it was the intention to enable supervisory authorities to initiate enforcement proceedings through the representative designated by the controllers or processors not established in the Union. This includes the possibility for supervisory authorities to address corrective measures or administrative fines and penalties imposed on the controller or processor not established in the Union to the representative, in accordance with articles 58(2) and 83 of the GDPR. The possibility to hold a representative directly liable is however limited to its direct obligations referred to in articles 30 and article 58(1) a of the GDPR

另需指出，代表之概念被精確採用，係為了促進第 3 條第 2 項下之控管者或受託運用者之聯繫，並確保 GDPR 對其有效之執法。為此目的，代表之概念係為使監管機關能夠透過未成立於歐盟境內的控管者或受託運用者所指定之代表啟動執法程序。依據 GDPR 第 58 條第 2 項和第 83 條，此包括監管機關得透過施加糾正措施或行政罰鍰及懲罰於其代表，以懲處未成立於歐盟境內之控管者或受託運用者。然而，欲使代表負直接責任之可能性僅限於 GDPR 第 30 條和第 58 條第 1 項第 a 款所規範之直接義務。

The EDPB furthermore highlights that article 50 of the GDPR notably aims at facilitating the enforcement of legislation in relation to third countries and international organisation, and that the development of further international cooperation mechanisms in this regard is currently being considered.

EDPB 進一步強調，GDPR 第 50 條主要目的係促進與第三國和國際組織相關之法規執行，且目前正在考量此面向上可進一步發展之國際合作機制。