

Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

CHAPTER VI

Independent supervisory authorities

Section 1

Independent status

Article 41

Supervisory authority

1 Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Directive, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union ('supervisory authority').

2 Each supervisory authority shall contribute to the consistent application of this Directive throughout the Union. For that purpose, the supervisory authorities shall cooperate with each other and with the Commission in accordance with Chapter VII.

3 Member States may provide for a supervisory authority established under Regulation (EU) 2016/679 to be the supervisory authority referred to in this Directive and to assume responsibility for the tasks of the supervisory authority to be established under paragraph 1 of this Article.

4 Where more than one supervisory authority is established in a Member State, that Member State shall designate the supervisory authority which are to represent those authorities in the Board referred to in Article 51.

Article 42

Independence

1 Each Member State shall provide for each supervisory authority to act with complete independence in performing its tasks and exercising its powers in accordance with this Directive.

2 Member States shall provide for the member or members of their supervisory authorities in the performance of their tasks and exercise of their powers in accordance with this Directive, to remain free from external influence, whether direct or indirect, and that they shall neither seek nor take instructions from anybody.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

3 Members of Member States' supervisory authorities shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

4 Each Member State shall ensure that each supervisory authority is provided with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board.

5 Each Member State shall ensure that each supervisory authority chooses and has its own staff which shall be subject to the exclusive direction of the member or members of the supervisory authority concerned.

6 Each Member State shall ensure that each supervisory authority is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget.

Article 43

General conditions for the members of the supervisory authority

1 Member States shall provide for each member of their supervisory authorities to be appointed by means of a transparent procedure by:

- their parliament;
- their government;
- their head of State; or
- an independent body entrusted with the appointment under Member State law.

2 Each member shall have the qualifications, experience and skills, in particular in the area of the protection of personal data, required to perform their duties and exercise their powers.

3 The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement, in accordance with the law of the Member State concerned.

4 A member shall be dismissed only in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.

Article 44

Rules on the establishment of the supervisory authority

1 Each Member State shall provide by law for all of the following:

- a the establishment of each supervisory authority;
- b the qualifications and eligibility conditions required to be appointed as a member of each supervisory authority;
- c the rules and procedures for the appointment of the member or members of each supervisory authority;
- d the duration of the term of the member or members of each supervisory authority of not less than four years, except for the first appointment after 6 May 2016, part of which may take place for a shorter period where that is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure;

- e whether and, if so, for how many terms the member or members of each supervisory authority is eligible for reappointment;
- f the conditions governing the obligations of the member or members and staff of each supervisory authority, prohibitions on actions, occupations and benefits incompatible therewith during and after the term of office and rules governing the cessation of employment.

2 The member or members and the staff of each supervisory authority shall, in accordance with Union or Member State law, be subject to a duty of professional secrecy both during and after their term of office, with regard to any confidential information which has come to their knowledge in the course of the performance of their tasks or the exercise of their powers. During their term of office, that duty of professional secrecy shall in particular apply to reporting by natural persons of infringements of this Directive.