

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)(Text with EEA relevance)

CHAPTER VI

Independent supervisory authorities

Section 1

Independent status

Article 51

Supervisory authority

- 1 Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation, 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 Regulation throughout the Union. For that purpose, the supervisory authorities shall cooperate with each other and the Commission in accordance with Chapter VII.
- 3 Where more than one supervisory authority is established in a Member State, that Member State shall designate the supervisory authority which is to represent those authorities in the Board and shall set out the mechanism to ensure compliance by the other authorities with the rules relating to the consistency mechanism referred to in Article 63.
- 4 Each Member State shall notify to the Commission the provisions of its law which it adopts pursuant to this Chapter, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

Article 52

Independence

- 1 Each supervisory authority shall act with complete independence in performing its tasks and exercising its powers in accordance with this Regulation.
- 2 The member or members of each supervisory authority shall, in the performance of their tasks and exercise of their powers in accordance with this Regulation, remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from anybody.
- 3 Member or members of each supervisory authority 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.

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Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2016/679 of the European Parliament and of the Council, CHAPTER VI. (See end of Document for details)

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 53

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 its duties and exercise its 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 54

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 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 no less than four years, except for the first appointment after 24 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

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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 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 Regulation.

Section 2

Competence, tasks and powers

Article 55

Competence

1 Each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State.

2 Where processing is carried out by public authorities or private bodies acting on the basis of point (c) or (e) of Article 6(1), the supervisory authority of the Member State concerned shall be competent. In such cases Article 56 does not apply.

3 Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Article 56

Competence of the lead supervisory authority

1 Without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.

2 By derogation from paragraph 1, each supervisory authority shall be competent to handle a complaint lodged with it or a possible infringement of this Regulation, if the subject matter relates only to an establishment in its Member State or substantially affects data subjects only in its Member State.

3 In the cases referred to in paragraph 2 of this Article, the supervisory authority shall inform the lead supervisory authority without delay on that matter. Within a period of three weeks after being informed the lead supervisory authority shall decide whether or not it will handle the case in accordance with the procedure provided in Article 60, taking into account whether or not there is an establishment of the controller or processor in the Member State of which the supervisory authority informed it.

4 Where the lead supervisory authority decides to handle the case, the procedure provided in Article 60 shall apply. The supervisory authority which informed the lead supervisory authority may submit to the lead supervisory authority a draft for a decision. The

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lead supervisory authority shall take utmost account of that draft when preparing the draft decision referred to in Article 60(3).

5 Where the lead supervisory authority decides not to handle the case, the supervisory authority which informed the lead supervisory authority shall handle it according to Articles 61 and 62.

6 The lead supervisory authority shall be the sole interlocutor of the controller or processor for the cross-border processing carried out by that controller or processor.

Article 57

Tasks

1 Without prejudice to other tasks set out under this Regulation, each supervisory authority shall on its territory:

- a monitor and enforce the application of this Regulation;
- b promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing. Activities addressed specifically to children shall receive specific attention;
- c advise, in accordance with Member State law, the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing;
- d promote the awareness of controllers and processors of their obligations under this Regulation;
- e upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, cooperate with the supervisory authorities in other Member States to that end;
- f handle complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 80, and investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;
- g cooperate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation;
- h conduct investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or other public authority;
- i monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;
- j adopt standard contractual clauses referred to in Article 28(8) and in point (d) of Article 46(2);
- k establish and maintain a list in relation to the requirement for data protection impact assessment pursuant to Article 35(4);
- l give advice on the processing operations referred to in Article 36(2);
- m encourage the drawing up of codes of conduct pursuant to Article 40(1) and provide an opinion and approve such codes of conduct which provide sufficient safeguards, pursuant to Article 40(5);

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- n encourage the establishment of data protection certification mechanisms and of data protection seals and marks pursuant to Article 42(1), and approve the criteria of certification pursuant to Article 42(5);
 - o where applicable, carry out a periodic review of certifications issued in accordance with Article 42(7);
 - p draft and publish the criteria for accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
 - q conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 41 and of a certification body pursuant to Article 43;
 - r authorise contractual clauses and provisions referred to in Article 46(3);
 - s approve binding corporate rules pursuant to Article 47;
 - t contribute to the activities of the Board;
 - u keep internal records of infringements of this Regulation and of measures taken in accordance with Article 58(2); and
 - v fulfil any other tasks related to the protection of personal data.
- 2 Each supervisory authority shall facilitate the submission of complaints referred to in point (f) of paragraph 1 by measures such as a complaint submission form which can also be completed electronically, without excluding other means of communication.
- 3 The performance of the tasks of each supervisory authority shall be free of charge for the data subject and, where applicable, for the data protection officer.
- 4 Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may charge a reasonable fee based on administrative costs, or refuse to act on the request. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

Article 58

Powers

- 1 Each supervisory authority shall have all of the following investigative powers:
- a to order the controller and the processor, and, where applicable, the controller's or the processor's representative to provide any information it requires for the performance of its tasks;
 - b to carry out investigations in the form of data protection audits;
 - c to carry out a review on certifications issued pursuant to Article 42(7);
 - d to notify the controller or the processor of an alleged infringement of this Regulation;
 - e to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its tasks;
 - f to obtain access to any premises of the controller and the processor, including to any data processing equipment and means, in accordance with Union or Member State procedural law.
- 2 Each supervisory authority shall have all of the following corrective powers:
- a to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;
 - b to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;

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- c to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;
 - d to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;
 - e to order the controller to communicate a personal data breach to the data subject;
 - f to impose a temporary or definitive limitation including a ban on processing;
 - g to order the rectification or erasure of personal data or restriction of processing pursuant to Articles 16, 17 and 18 and the notification of such actions to recipients to whom the personal data have been disclosed pursuant to Article 17(2) and Article 19;
 - h to withdraw a certification or to order the certification body to withdraw a certification issued pursuant to Articles 42 and 43, or to order the certification body not to issue certification if the requirements for the certification are not or are no longer met;
 - i to impose an administrative fine pursuant to Article 83, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case;
 - j to order the suspension of data flows to a recipient in a third country or to an international organisation.
- 3 Each supervisory authority shall have all of the following authorisation and advisory powers:
- a to advise the controller in accordance with the prior consultation procedure referred to in Article 36;
 - b to issue, on its own initiative or on request, opinions to the national parliament, the Member State government or, in accordance with Member State law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data;
 - c to authorise processing referred to in Article 36(5), if the law of the Member State requires such prior authorisation;
 - d to issue an opinion and approve draft codes of conduct pursuant to Article 40(5);
 - e to accredit certification bodies pursuant to Article 43;
 - f to issue certifications and approve criteria of certification in accordance with Article 42(5);
 - g to adopt standard data protection clauses referred to in Article 28(8) and in point (d) of Article 46(2);
 - h to authorise contractual clauses referred to in point (a) of Article 46(3);
 - i to authorise administrative arrangements referred to in point (b) of Article 46(3);
 - j to approve binding corporate rules pursuant to Article 47.
- 4 The exercise of the powers conferred on the supervisory authority pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedy and due process, set out in Union and Member State law in accordance with the Charter.
- 5 Each Member State shall provide by law that its supervisory authority shall have the power to bring infringements of this Regulation to the attention of the judicial authorities and where appropriate, to commence or engage otherwise in legal proceedings, in order to enforce the provisions of this Regulation.
- 6 Each Member State may provide by law that its supervisory authority shall have additional powers to those referred to in paragraphs 1, 2 and 3. The exercise of those powers shall not impair the effective operation of Chapter VII.

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Article 59

Activity reports

Each supervisory authority shall draw up an annual report on its activities, which may include a list of types of infringement notified and types of measures taken in accordance with Article 58(2). Those reports shall be transmitted to the national parliament, the government and other authorities as designated by Member State law. They shall be made available to the public, to the Commission and to the Board.

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