PRIVACY COMPANY

EUROPEAN PRIVACY REGULATION

Simone Fennell
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Arnold Roosendaal (eds.)

Foreword by Prof. Paul de Hert

European Privacy Regulation

General Data Protection Regulation (GDPR)
for privacy professionals

International edition

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FOREWORD

Dear reader,

It has been a busy year in privacy. Researchers have been holding vibrant discussions on the privacy implications of big data and artificial intelligence, e-privacy regulation is currently under review, and authorities are (re-)positioning themselves. An impressive volume of cases has been published and many GDPR topics still require further exploration. These are just a few examples that illustrate the complexity and diversity of the privacy arena.

The evolution of the global and European privacy landscape also comes with many practical challenges for data protection. Businesses and public institutions are trying to get a grip on privacy regulations and their organisational consequences. And perhaps even more than ever, businesses and public institutions are looking for ways to make data protection work in practice.

This is why I encourage organisations such as Privacy Company to provide pragmatic solutions for privacy implementations, bridging the gap between complex regulations and data protection in practice. Examples are guidelines for privacy by design, software services to demonstrate compliance and publications that make privacy accessible to a wide audience.

This English pocket edition on European privacy regulation exemplifies how useful such a publication is when dealing with privacy on a daily basis. As such, it is indispensable for all privacy professionals and for those who are interested in the field.

Enjoy reading and using this pocket guide!

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INTRODUCTION

In 2015 and 2016, Privacy Company published pocket privacy guides to support professionals in their privacy implementations. Both pocket guides are widely used by privacy professionals, and users have praised them as convenient reference material for day-to-day activities. Users have made some suggestions as well – making the guide available to a non-Dutch audience and including the recitals topped the list. An updated international edition was born.

This pocket guide presents European data protection regulation for privacy professionals. It includes an introduction to European courts, the European Convention on Human Rights (partly) and the Charter of Fundamental Rights of the EU (partly). Subsequently, its main focus is on the General Data Protection Regulation (GDPR).

Superhero Captain Privacy starts off by explaining seven of the biggest misunderstandings of the GDPR. This is followed by a presentation of the recitals and the GDPR articles. Since privacy regulations do not always read that easily, Captain Privacy summarises each article in a tweet.

The GDPR introduces harsh sanctions. Captain Privacy refers to these sanctions to point out the financial risk of not adhering to the regulation for the relevant articles. "€ 0–€ 20m or up to 4%" should be read as "fines of up to €20,000,000 or up to 4% of annual worldwide turnover, whichever is the higher". If the sanction is within a specific section of the article, it implies that the section only applies to that particular paragraph.

Captain Privacy *highlights specific sections.* Italicised highlights are used to draw attention to relevant sections of articles and have no legal meaning. Moreover, references to recitals are included to clarify the background of an article when needed.

Two factsheets are included. The GDPR factsheet provides you with an overview of the implications of privacy regulation for your organisation. The Data Protection by Design Framework shows how you can apply data protection in the designs of new processes and services.

Last but not least, this pocket guide contains a convenient index to help you search quickly using key terminology.

We excluded e-privacy regulation since it is currently being reviewed. We also excluded sector- and country-specific implementation guidelines to keep the size of this book handy.

You can find the most recent version of this pocket guide on our website: www.privacycompany.eu. Please refer to http://eur-lex.europa.eu/ for the most up to date privacy regulations.

Special thanks go to Menno Loos, Carolin Kaiser, Nicky Looije and Jake van Putten for their contributions to this pocket guide.

About Privacy Company

We have 100 years of privacy experience in our team. With consultancy, training programmes, Privacy Nexus software and Data Protection Officer services, we help your organisation with a pragmatic approach to GDPR compliance.

If you have suggestions for improving this edition, or if you are interested in our services, willing to share your talent with us, or would like to partner our organisation, please do let us know. Our team would love to hear from you.

We hope this pocket guide will be useful, and wish you lots of fun in your privacy journey!

The editors,
Simone Fennell, Frank Koppejan, Erwin Rigter and Arnold Roosendaal
January 2018

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INTRODUCTION TO EUROPEAN COURTS

Under both international and European law, as well as on a national level, everyone has the right to the protection of his or her personal data. In 1948, for the first time in history, the Universal Declaration of Human Rights (UDHR) set an international standard for the protection of human rights. Although not legally binding, the UDHR has sparked the development of international treaties and national legislation recognising and protecting human rights.

The UDHR is the starting point for privacy protection as we know it today:

> "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." (Art. 12 UDHR)

European Convention on Human Rights (ECHR)

The European Convention on Human Rights (ECHR) of 1950 is a binding instrument from the Council of Europe (CoE), the continent's leading human rights organisation. The CoE promotes human rights, democracy and the rule of law, and aims to guarantee the rights of citizens in relation to governments. The ECHR is enforced by the European Court of Human Rights (ECtHR) in Strasbourg (France). The ECHR was a direct result of the UDHR and takes the first steps in enforcing the rights laid down in the UDHR.

Article 8 states:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The protection of personal data as such is not specifically governed by this article. However, according to ECtHR case law, personal data is deemed to be understood covered by the right to respect for private and family life, and therefore protected under Article 8 of the ECHR.

Any citizen or group of citizens can lodge a complaint against a Member State's application of the Convention. Member States' governments may also file a complaint against another Member State, but this rarely happens. The ECtHR assesses whether or not the ECHR has been violated; which can be seen as a *recovery approach.* Before starting proceedings in Strasbourg, all national legal remedies must be exhausted. The Court's decisions are binding on the CoE Member States. Upon request of the Committee of Ministers of the CoE, the ECtHR can also render advisory opinions on the interpretation of the ECHR and its protocols.

It is a common misunderstanding that the CoE is part of the European Union. In fact, it is not restricted to European-Union Members. The CoE comprises 47 countries, including non-EU members. However, all EU Member States are member to the CoE, and therefore signatories to the ECHR. CoE membership is mandatory for new EU Member States.

EU Law

The protection of personal data in the European Union is enshrined in the Charter of Fundamental Rights (CFR) and other relevant European legislation, most importantly the General Data Protection Regulation (GDPR). Much of the CFR is based on the ECHR. It includes a general provision guaranteeing respect for private and family life, as well as a provision specifically protecting personal data:

> **Article 7 – Respect for private and family life**
> Everyone has the right to respect for his or her private and family life, home and communications.
>
> **Article 8 – Protection of personal data**
> 1. Everyone has the right to the protection of personal data concerning him or her.
> 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
> 3. Compliance with these rules shall be subject to control by an independent authority.

The Court of Justice of the European Union (CJEU), often referred to as the 'European Court of Justice' (ECJ), is the judiciary of the EU and based in Luxembourg. In cases where EU law is involved, the ECJ has jurisdiction to give preliminary ruling concerning:

a. The interpretation of EU Treaties;
b. The validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.

In cases where fundamental rights have (allegedly) been violated, individuals may invoke their rights stemming from both national and international legislation. The ECJ only rules on so-called *prejudicial questions* – questions asked by national courts on the interpretation of EU law. In a *preliminary ruling,* the ECJ rules on the interpretation or validity of EU law. When a question on EU law arises before a national court, it is at the court's own discretion to ask prejudicial questions, unless the national court is the court of last resort (usually a supreme court or constitutional court of some sort). If this is the case, the court is obliged to bring the matter before the ECJ. The national court asks the ECJ for a correct interpretation of EU law. This explanation is binding and is to be taken into account in the proceedings before the national court. The national court decides on the consequences of the newly established interpretation for the pending case. This is the *future approach.* In contrast to the ECHR procedure, citizens cannot complain directly to the ECJ unless they are lodging a complaint against an EU body. The European Commission can also lodge a complaint against a Member State for failing to fulfil its obligation under EU law.

EUROPEAN CONVENTION ON HUMAN RIGHTS (IN PART)

Article 8 Right to respect for private and family life

1. Everyone has the right to *respect* for his *private and family life*, his *home* and his *correspondence*.
2. There shall be *no interference* by a *public authority* with the exercise of this right *except* such as is *in accordance with the law* and is *necessary* in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (IN PART)

2012/C 326/02

TITLE II FREEDOMS

Article 7 Respect for private and family life

Everyone has the right to *respect* for his or her *private and family life*, *home* and *communications*.

Article 8 Protection of personal data

1. Everyone has the right to the *protection* of *personal data* concerning him or her.
2. Such data must be processed *fairly* for *specified purposes* and on the basis of the *consent* of the person concerned or some other *legitimate basis* laid down by law. Everyone has the right of *access* to data which has been collected concerning him or her, and the right to have it *rectified*.
3. Compliance with these rules shall be subject to control by an independent authority.

TITLE VII GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 52 Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be *provided* for *by law* and *respect* the essence of those rights and freedoms. Subject to the principle of *proportionality*, limitations may be made only if they are *necessary* and genuinely meet *objectives* of *general interest* recognised by the Union or the *need to protect* the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and

Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more *extensive protection*.

4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53 Level of protection

Nothing in this Charter shall be interpreted as *restricting* or *adversely affecting* human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

THE 7 GREATEST MISUNDERSTANDINGS ABOUT THE GDPR

The General Data Protection Regulation (GDPR) is into effect from May 25th, 2018 onwards. This EU regulation supersedes the Data Protection Directive (Directive 95/46/EC); further harmonising the EU legal landscape on data protection. The Regulation will extend the protection of data subjects and increase compliance duties of controllers, supported by rather serious sanctions.

However, there are still misunderstandings about several subjects and provisions of the GDPR. We set the record straight on the 7 most frequently heard misunderstandings.

In the first place, it is not always clear what constitutes personal data. Personal data does not require a name, nor does it only relate to highly sensitive personal information. We will first elucidate this misunderstanding, since it determines the applicability of the GDPR. Secondly, we will explain that personal data remains within the scope of the Regulation even when it is pseudonymised. Next, the GDPR introduces the duty to maintain a record of processing activities. Many people think this duty applies only to large companies with more than 250 employees. This is the third misunderstanding we will resolve. Fourthly, it is often thought that a DPO is the same as a privacy officer, but this is not true. We will elaborate on this and discuss the cases in which a DPO must be appointed in your organisation. The fifth misunderstanding concerns privacy impact assessments (PIAs). What is a PIA and when is one required? In the sixth place, we will discuss covenants. Finally, we will elaborate on the concept of consent.

1. Personal data
2. Pseudonymisation
3. Record of processing activities
4. Data Protection Officers
5. Privacy impact assessments
6. Covenants
7. Consent

1. Personal data

"What constitutes personal data?" is perhaps the most fundamental question in data protection law. Personal data comprises much more than just names, addresses or social security numbers. The GDPR defines personal data as any information relating to an identified or identifiable natural person.[1]
As this definition consists of four elements, it is also known as the four-step test.

1. Any information
2. Relating to
3. An identified or identifiable
4. Natural person

Identifiable

When determining whether a natural person is identifiable, account should be taken of all means that could reasonably be used by the controller, or by another person, to identify the natural person, directly or indirectly. Data can still be personal even if the controller is unable to identify the data subject unaided. A car registration number is personal data, for instance, because even if the controller does not have access to the database of the national road administration, the mere fact that someone else has access to this database makes the registration number personal data.

Identifiable without a name

It is immaterial whether a name or contact details can be linked to certain information. A person is also identifiable by, for example, the combination of his or her location and some personal characteristic ("that short girl in the corner"), or other identifying characteristics, such as social or cultural identity, or belonging to and being considered a member of a certain group ("that old man of 81 with above-average interest in golf and cigars").

Reasonable means

Identifiability depends on whether the controller or another person is reasonably able to identify the data subject in the context described above. To ascertain whether means are reasonably likely to be used to

1 Art. 4(1) of the GDPR, and recitals 26, 27, 30 of the GDPR.

identify the natural person, account should be taken of all objective factors, such as the costs and the amount of time required for identification, taking into consideration the technology available at the time of processing and (future) technological developments.[2]

Anonymous data

The GDPR does not apply to anonymous data. Anonymisation is the process of turning personal data into a form that does not identify individuals and in which identification is not likely to take place. Data is anonymous when the data subject is not or no longer identifiable. Anonymisation requires more than just omitting names and contact details; the details of 'Customer 33' or 'Student s849623' are still personal data. Firstly, anonymous data can be obtained by aggregation: this is the compilation of data into information, e.g., "the average patient with disease X is between 60 and 70 years of age".
Anonymous data can also be obtained by randomising data. Randomisation is the process of randomly interchanging, for example, dates of birth and places of residence in a large sample.

Online identifiers

Natural persons may be associated with online identifiers. Unique numbers, such as IP addresses,[3] RFID tags, MAC addresses, or the IMEI numbers of smartphones, are often used for identification.[4] These identifiers may serve to link various website visits, recognising a visitor when he or she returns to a given website after a previous visit. This is used to create profiles of the interests of natural persons for advertising purposes. The use of such identifiers therefore qualifies as processing of personal data, even if the name of the person behind the identifier is unknown.

In conclusion, the definition of personal data is much broader than is often supposed.

2. Pseudonymisation

In the previous section we explained that personal data falls within the scope of the GDPR even when the real name of the data subject is unknown. In principle, data relating to a natural person is always covered

2 Recital 26 of the GDPR.
3 CJEU case C-582/14, *Breyer*.
4 Recital 30 of the GDPR.

by the GDPR. Only anonymous data is outside the material scope of the GDPR. But what about pseudonyms?

Pseudonyms

A pseudonym is essentially a person's going by another name than what is printed in his or her passport. Pseudonyms need not even be names as such, but can be any of the (unique) identifiers named in the previous section. In this way, the student number of a university student, the IP address of an Internet user, an individual's mobile phone number, or a gamer's user name in an online game may all serve as pseudonyms. Pseudonymous data is therefore the personal data relating to the pseudonymous data subject.

Generating a Pseudonym

Pseudonyms may grant protection to data subjects in some circumstances, but only where they are applied correctly. Most data sets will contain a number of identifiers about a given person. Some of these identifiers will be unique or nearly unique, such as names, dates of birth or IP addresses. In pseudonymisation, this data is replaced with other information to protect the data subject from being identified by these unique identifiers. As an additional safeguard, the GDPR demands that the key to reversing pseudonymisation must be kept separately from the data set itself.[5] It should also be noted that the explicit introduction of 'pseudonymisation' in the GDPR is not intended to preclude any other measures of data protection.[6]

Weakness of pseudonyms

It is important to realise that pseudonymous data is still personal data. The data subject is still identifiable when information has been pseudonymised. For the purposes of the GDPR, it makes no difference if a data subject is identifiable by his or her name or by his or her pseudonym. In addition, pseudonyms are vulnerable to inference attacks. For instance, if a data set of a group of fifty senior citizens is stripped of names, dates of birth and addresses, the data set will still contain information that makes each person identifiable. For instance, the data set may contain information about a person's occupation and marital status. Anyone knowing this

5 Article 4(5) of the GDPR.
6 Recital 28 of the GDPR.

information about a data subject will thus be able to find and identify that person in the data set.

Using pseudonyms

Despite these weaknesses, and despite pseudonymous data being personal data within the scope of the GDPR, the use of pseudonyms may still be attractive for organisations in data processing. By using pseudonyms, the processor may avoid using other identifying information regarding an individual. This may help the controller to minimise the amount of personal data used in each processing, and it may reduce the risk to individuals inherent in such processing activities.

3. Record of processing activities

Article 30 of the GDPR describes the obligation to keep a record of processing activities. Controllers as well as processors must maintain an overview of the processing they do. This obligation to keep a record replaces the obligation to notify the supervisory authority prior to a processing activity.[7]
A widespread misconception concerning this record is that the obligation to keep such a record only applies to large companies. This is not true. Smaller organisations may also be subject to this obligation.
The GDPR prescribes that organisations with fewer than 250 employees are not required to maintain a record of processing activities.[8] However, when one of the following conditions applies, a record is mandatory, regardless of the number of employees.[9]

- Where processing is likely to result in a risk for data subjects;
- Where processing is not just occasional;
- Where criminal records are processed, or where processing includes special categories of data, such as data about health or religion.

Likely risk

Record-keeping is mandatory if an organisation conducts processing that is likely to result in a risk for the data subject. To assess whether processing presents such a risk, the following factors must be considered: the nature, scope, context and purposes of processing, as well as the varying

7 Article 18 of Data Protection Directive 95/46/EC.
8 Article 30(5) of the GDPR.
9 Idem.

likelihood and severity of risks for the rights and freedoms of natural persons.[10]

Not occasional

An organisation is obliged to keep a record if data is not just processed on an occasional basis. An example of occasional processing is when a marketing department informs clients of the change of address when a company relocates. This is obviously an occasional processing of client data. Only occasional processing activities are exempt from the record of processing activities. Where an organisation processes personal data on a structural basis, it is always subject to the obligation to maintain a record, even if the company has fewer than 250 employees.

Special data categories

Data processing activities must also be recorded if an organisation processes special categories of data, or data concerning criminal records. An example would be the case of job applications, which may contain information on special categories of personal data (passport photo, religious information). Also, when recruiting, some companies require a certificate of good conduct from candidates. This information may contain details of a data subject's criminal record. Such data is processed in most companies, even small organisations with fewer than 250 employees.

It can be concluded that most organisations, small or large, do not just process data occasionally. In almost every organisation there is some processing activity that takes place on a structural basis. In addition, it is not uncommon for special categories of data or data on an individual's criminal record to be processed. This results in an obligation to keep a record of processing activity for most organisations, small or large. However, maintaining such a record can also be seen as a way of getting and maintaining an overview of the processing activities taking place within an organisation.

10 Article 30(5), 24(1) of the GDPR.

4. Data Protection Officers

The GDPR describes different roles in the personal data processing life cycle. One of them is the Data Protection Officer (DPO).[11] The DPO is an independent person within an organisation or within a group of organisations. His or her main goal is to strive for and monitor compliance with the GDPR. In order to do so, the DPO occupies a special (independent) position[12] and is assigned several specific tasks.[13]

It is a widespread misunderstanding that a DPO is mandatory for every organisation. It is also not true that a DPO is only mandatory for large organisations. Although it can be very useful for organisations to appoint a DPO, it is only mandatory in three specific cases.[14]
Under Article 37 of the GDPR, a controller or processor must designate a DPO whenever:

1. Processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
2. The core activities of the controller or processor consist of processing operations which, by virtue of their nature, scope and/or purposes, require regular and systematic monitoring of data subjects on a large scale; or
3. The core activities of the controller or processor consist of the large-scale processing of special categories of data or personal data relating to criminal convictions and offences.

Core activities

The second and third reason to appoint a DPO refer to 'core activities of the controller or processor'. According to recital 97 of the GDPR, the core activities of a controller relate to its primary activities and do not relate to the processing of personal data as ancillary activities. According to the Article 29 Working Party[15], these core activities can be considered to be the key operations necessary to achieve the controller's or processor's

11 Articles 37–39 of the GDPR. Another misunderstanding: a privacy officer is not the same as a DPO. "Privacy officer" is an unofficial denomination usually used to indicate an employee in the compliance department charged with privacy, whereas "DPO" is a legal term indicating someone whose position, tasks and responsibilities are laid down in the GDPR.
12 Article 38 of the GDPR.
13 Article 39 of the GDPR.
14 Article 37 of the GDPR.
15 The Article 29 Working Party is an independent advisory board. See: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50083

goals.[16] These core activities include activities where the processing of data forms an inextricable part of the controller's or processor's activity. For example, a hospital's main goal is not to process data; it is to provide health care. However, processing data on an individual's health is an inextricable part of health care – it is necessary to provide health care safely and effectively. Health data is one of the special categories of personal data.[17]
These inextricable activities must be distinguished from the necessary support functions for the organisation's core activity or main business, however. For instance, the HR department of the hospital mentioned above may also process sensitive data when dealing with the sick leave of its own personnel. Such ancillary tasks take place in almost every organisation.

Large Scale

The second and third reasons for appointing a DPO also mention 'large scale' (for monitoring or for the processing of special categories). The GDPR does not define what constitutes large-scale processing. However, recital 91 does provide some guidance. Large-scale processing would include processing operations that aim to process a considerable amount of personal data at regional, national or supranational level and that could affect a large number of data subjects.
As shown above, one of the core activities of hospitals is the processing of special categories of data. Since processing also takes place on a large scale, hospitals will generally need to designate a DPO.[18]
In contrast, the processing of personal data should not be considered large scale if the processing is of personal data of patients or clients by an individual physician or other health-care professional.[19] Therefore, a DPO is not mandatory in these cases.
There is a large grey area between these examples that is difficult to classify. The Article 29 Working Party recommends that the following factors be considered when determining whether processing is carried out on a large scale: the number of data subjects concerned, the volume of data

16 WP243, Guidelines on DPO, p. 7. Accessible here: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50083
17 Article 9(1) of the GDPR.
18 On the basis of Article 37(1) sub c of the GDPR.
19 It should be borne in mind that this recital deals with PIAs. This implies that some elements might be specific to that context and do not necessarily apply to the designation of DPOs in the exact same way.

and/or range of different data items, the duration or permanence of the processing and the geographical extent of the processing.[20]

Voluntary appointment of a DPO

If an organisation is not obliged to appoint a DPO under the GDPR, it may still do so voluntarily. The Article 29 Working Party encourages voluntary appointments of this type, but it should be noted that "voluntary" does not mean "non-committal". A DPO who has not been appointed to meet an obligation must comply equally with the same rules and frameworks as a DPO whose appointment is mandatory. Having an in-house DPO, whether mandatory or voluntary, can bring several advantages to an organisation, for example:

1. The DPO can act as an independent supervisor for compliance and as a direct point of contact for the supervisory authority;
2. The DPO may be a point of contact for data subjects in exercising their rights vis-à-vis the controller;
3. The DPO can act as an intermediary between different stakeholders;
4. The DPO can have a supporting role in the execution of (Data) Privacy Impact Assessments ([D]PIAs) and advise on the risks of data processing;
5. In the event of an audit or demonstration of the level of accountability, a DPO can relieve an organisation of its responsibilities.

5. Privacy impact assessments

The GDPR introduces the data protection impact assessment, often referred to as a privacy impact assessment (PIA).[21] It is often thought that such PIAs refer to an assessment of an organisation in its entirety, as some sort of audit to check the overall privacy compliance of a company. However, this is not the purpose of a PIA. A PIA is related to a specific processing activity of an organisation. Where a type of processing is likely to result in a high risk for natural persons, before processing, the controller shall conduct an assessment of the impact of the envisaged processing operations on the protection of personal data. Several processing operations

20 WP243, Guidelines on DPOs, pp7–8. Accessible here: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50083 These factors are quite obvious. The WP29 guidelines provide some examples. See p. 8.
21 Article 35 of the GDPR.

may be covered by a single PIA if they are similar in nature and their risks are comparable.[22]

Increased risk

The definition of "likely increased risk" is an open one. Article 35(1) of the GDPR stipulates that processing using new technologies is likely to involve an increased risk as the impact of such processing is difficult to estimate in advance. Paragraph 3 of Article 35 of the GDPR lists some examples of situations associated with a likely increased risk: automated decision making, large-scale processing of special categories of personal data and large-scale monitoring of the public. More generally, recital 91 adds that situations in which processing renders it more difficult for data subjects to exercise their rights constitute an important factor in determining whether processing activity constitutes an increased risk.

Three-step test

Whether a PIA is necessary can be determined in three steps. For each processing, the controller must make an initial assessment of the risks that may exist. An extended PIA must be conducted if it follows that there is likely to be a high risk associated with a processing activity. If this then shows that the high risk cannot be reduced by reasonable means, the Data Protection Authority (or Supervisory Authority) must be consulted prior to processing.[23]

6. Covenants

A covenant is a document in which parties declare their intention to work together towards a certain (policy) objective. Usually a covenant, or gentlemen's agreement, is an agreement between a number of public and/or private entities. For example, a municipality and a housing corporation may sign a covenant in which they agree to exchange personal data to combat nuisance. What is often erroneously assumed is that this exchange (i.e., processing) of personal data is lawful *because* the two parties have agreed to do so in a covenant. However, the mere agreement in the covenant does not form a lawful basis for processing. The misunderstanding here is really about the lawfulness of processing.

22 Article 35 of the GDPR.
23 Article 36 of the GDPR.

Lawfulness

The first principle that must be borne in mind when processing is that personal data must be processed lawfully.[24] Article 6 of the GDPR sums up the six grounds for lawful processing (consent, necessity for the performance of a contract, necessity for compliance with a legal obligation, necessity for protecting vital interests of a natural person, necessity for a task in the public interest, necessity for the legitimate interests of the controller or a third party). Processing shall be lawful only if and to the extent that at least one of these grounds applies. A covenant is not one of these grounds and can therefore not form the basis for lawful processing. We return to the example of a covenant on the exchange of personal data in the context of preventing nuisance. This type of practice may be perfectly lawful. However, the lawfulness of the exchange is based on another ground (one of the six grounds mentioned above); not on the covenant itself. In this case, the lawfulness of processing is based on the necessity of a task in the public interest.[25] One of the tasks in the public interest of the municipality and housing corporation is to – in short – prevent nuisance.[26]
The parties to the covenant must state the legal grounds in the covenant. Where a covenant relates to exchange of personal data, the rules for the exchange are usually elaborated in an attached protocol.

7. Consent

It is sometimes thought that personal data may only be processed after obtaining the consent of the data subject. However, consent is only one of the grounds for lawful processing. As mentioned earlier, article 6 of the GDPR sums up the six grounds for lawful processing.

24 Article 5(1)(a) of the GDPR.
25 Article 6(1) sub e of the GDPR. To be able to use this legal basis, it must be established that the processing of personal data is in fact *necessary* in order to perform the task in the public interest.
26 These tasks can be laid down in for example national law: In the Netherlands, the mayor is responsible for maintaining public order (Art. 172 of the *Gemeentewet*). Housing corporations have the task of contributing to the viability in the area of their residential units (Art. 45(2) sub f of the *Woningwet*). However, even for this task; personal data may only be processed insofar as is necessary.

Obtaining consent

Consent should be a freely given, specific, informed and unambiguous indication of the data subject's wish, signifying agreement to the processing of his or her personal data.[27]
Where processing is based on consent, the controller should be able to demonstrate that the data subject has consented to processing of his or her personal data.[28] There is no fixed form for the proof that permission has been obtained. Familiar means of proving consent are a signed written statement, an online check mark that must be checked before proceeding, or a recorded oral statement. In practice, generic proof is often used, as in the case of the online check mark: it is then proved that the system on the day in question worked in such a way that permission was required to proceed, from which it follows that the data subject also gave permission.

Children

Article 8 of the GDPR describes the conditions applicable to consent in relation to information-society services (e.g. online shops or on-demand streaming services) where children are concerned. If the child is below the age of 16, processing is only lawful if and to the extent that consent is granted by the child's parents. However, the GDPR leaves some space for variation by Member States. Member States may lower the age limit of the GDPR for those purposes, provided that such a lower age is not below 13 years.

Sensitive Data

Finally, Article 9 of the GDPR describes the grounds for processing special categories of personal data (sensitive data). Where consent is given for the processing of sensitive data, consent must be explicit. When granting consent for the processing of personal data that do not fall into special categories, it is possible to infer implied consent based on the data subject's conduct, provided it is clear that the data subject has consented to the proposed processing. Consent for the processing of special categories of personal data requires more: there must be an explicit expression of the deliberate intention of giving consent. The threshold for giving consent for sensitive data is therefore higher than for personal data.

27 Article 4(11) and recital 32 of the GDPR.
28 Article 7(1) of the GDPR.

GDPR RECITALS

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)

1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the 'Charter') and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her.

2) The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data. This Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and to the well-being of natural persons.

3) Directive 95/46/EC of the European Parliament and of the Council seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to ensure the free flow of personal data between Member States.

4) The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.

5) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border flows of personal data. The exchange of personal data between public and private actors, including natural persons, associations

and undertakings across the Union has increased. National authorities in the Member States are being called upon by Union law to cooperate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State.

6) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of the collection and sharing of personal data has increased significantly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Natural persons increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and should further facilitate the free flow of personal data within the Union and the transfer to third countries and international organisations, while ensuring a high level of the protection of personal data.

7) Those developments require a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance of creating the trust that will allow the digital economy to develop across the internal market. Natural persons should have control of their own personal data. Legal and practical certainty for natural persons, economic operators and public authorities should be enhanced.

8) Where this Regulation provides for specifications or restrictions of its rules by Member State law, Member States may, as far as necessary for coherence and for making the national provisions comprehensible to the persons to whom they apply, incorporate elements of this Regulation into their national law.

9) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the implementation of data protection across the Union, legal uncertainty or a widespread public perception that there are significant risks to the protection of natural persons, in particular with regard to online activity. Differences in the level of protection of the rights and freedoms of natural persons, in particular the right to the protection of personal

data, with regard to the processing of personal data in the Member States may prevent the free flow of personal data throughout the Union. Those differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. Such a difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.

10) In order to ensure a consistent and high level of protection of natural persons and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of natural persons with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Regarding the processing of personal data for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Member States should be allowed to maintain or introduce national provisions to further specify the application of the rules of this Regulation. In conjunction with the general and horizontal law on data protection implementing Directive 95/46/EC, Member States have several sector-specific laws in areas that need more specific provisions. This Regulation also provides a margin of manoeuvre for Member States to specify its rules, including for the processing of special categories of personal data ('sensitive data'). To that extent, this Regulation does not exclude Member State law that sets out the circumstances for specific processing situations, including determining more precisely the conditions under which the processing of personal data is lawful.

11) Effective protection of personal data throughout the Union requires the strengthening and setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for infringements in the Member States.

12) Article 16(2) TFEU mandates the European Parliament and the Council to lay down the rules relating to the protection of natural persons with regard to the processing of personal data and the rules relating to the free movement of personal data.

13) In order to ensure a consistent level of protection for natural persons throughout the Union and to prevent divergences hampering the free movement of personal data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide natural persons in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective cooperation between the supervisory authorities of different Member States. The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a derogation for organisations with fewer than 250 employees with regard to record-keeping. In addition, the Union institutions and bodies, and Member States and their supervisory authorities, are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw from Article 2 of the Annex to Commission Recommendation 2003/361/EC.

14) The 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. This Regulation does not cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person.

15) In order to prevent creating a serious risk of circumvention, the protection of natural persons should be technologically neutral

and should not depend on the techniques used. The protection of natural persons should apply to the processing of personal data by automated means, as well as to manual processing, if the personal data are contained or are intended to be contained in a filing system. Files or sets of files, as well as their cover pages, which are not structured according to specific criteria should not fall within the scope of this Regulation.

16) This Regulation does not apply to issues of protection of fundamental rights and freedoms or the free flow of personal data related to activities which fall outside the scope of Union law, such as activities concerning national security. This Regulation does not apply to the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union.

17) Regulation (EC) No 45/2001 of the European Parliament and of the Council applies to the processing of personal data by the Union institutions, bodies, offices and agencies. Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data should be adapted to the principles and rules established in this Regulation and applied in the light of this Regulation. In order to provide a strong and coherent data protection framework in the Union, the necessary adaptations of Regulation (EC) No 45/2001 should follow after the adoption of this Regulation, in order to allow application at the same time as this Regulation.

18) This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. However, this Regulation applies to controllers or processors which provide the means for processing personal data for such personal or household activities.

19) 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, including the safeguarding against and the prevention of threats to public security and the free movement of such data, is the subject of a specific Union legal act. This Regulation should not, therefore, apply to processing activities for those purposes. However, personal data processed by public authorities under this Regulation should, when used for those purposes, be governed by a more specific Union legal act, namely Directive (EU) 2016/680 of the European Parliament and of the Council. Member States may entrust competent authorities within the meaning of Directive (EU) 2016/680 with tasks which are not necessarily carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, falls within the scope of this Regulation.

With regard to the processing of personal data by those competent authorities for purposes falling within scope of this Regulation, Member States should be able to maintain or introduce more specific provisions to adapt the application of the rules of this Regulation. Such provisions may determine more precisely specific requirements for the processing of personal data by those competent authorities for those other purposes, taking into account the constitutional, organisational and administrative structure of the respective Member State. When the processing of personal data by private bodies falls within the scope of this Regulation, this Regulation should provide for the possibility for Member States under specific conditions to restrict by law certain obligations and rights when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific important interests including public security and the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. This is relevant for instance in the framework of anti-money laundering or the activities of forensic laboratories.

20) While this Regulation applies, inter alia, to the activities of courts and other judicial authorities, Union or Member State law could

specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of its judicial tasks, including decision-making. It should be possible to entrust supervision of such data processing operations to specific bodies within the judicial system of the Member State, which should, in particular ensure compliance with the rules of this Regulation, enhance awareness among members of the judiciary of their obligations under this Regulation and handle complaints in relation to such data processing operations.

21) This Regulation is without prejudice to the application of Directive 2000/31/EC of the European Parliament and of the Council, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive. That Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between Member States.

22) 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.

23) In order to ensure that natural persons are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects who are in the Union by a controller or a processor not established in the Union should be subject to this Regulation where the processing activities are related to offering goods or services to such data subjects irrespective of whether connected to a payment. 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. 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.

24) The 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. 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.

25) Where 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.

26) The principles of data protection should apply to any information concerning an identified or identifiable natural person. Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person. To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascer-

tain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments. The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.

27) This Regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons.

28) The application of pseudonymisation to personal data can reduce the risks to the data subjects concerned and help controllers and processors to meet their data-protection obligations. The explicit introduction of 'pseudonymisation' in this Regulation is not intended to preclude any other measures of data protection.

29) In order to create incentives to apply pseudonymisation when processing personal data, measures of pseudonymisation should, whilst allowing general analysis, be possible within the same controller when that controller has taken technical and organisational measures necessary to ensure, for the processing concerned, that this Regulation is implemented, and that additional information for attributing the personal data to a specific data subject is kept separately. The controller processing the personal data should indicate the authorised persons within the same controller.

30) Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.

31) Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law. The requests for disclosure sent by the public authorities should always be in writing, reasoned and occasional and should not concern the entirety of a filing system or lead to the interconnection of filing systems. The processing of personal data by those public authorities should comply with the applicable data-protection rules according to the purposes of the processing.

32) Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Silence, pre-ticked boxes or inactivity should not therefore constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them. If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

33) It is often not possible to fully identify the purpose of personal data processing for scientific research purposes at the time of data collection. Therefore, data subjects should be allowed to give their consent to certain areas of scientific research when in keeping with recognised ethical standards for scientific research. Data subjects should have the opportunity to give their consent only to certain areas of research or parts of research projects to the extent allowed by the intended purpose.

34) Genetic data should be defined as personal data relating to the inherited or acquired genetic characteristics of a natural person which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained.

35) Personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject. This includes information about the natural person collected in the course of the registration for, or the provision of, health care services as referred to in Directive 2011/24/EU of the European Parliament and of the Council to that natural person; a number, symbol or particular assigned to a natural person to uniquely identify the natural person for health purposes; information derived from the testing or examination of a body part or bodily substance, including from genetic data and biological samples; and any information on, for example, a disease, disability, disease risk, medical history, clinical treatment or the physiological or biomedical state of the data subject independent of its source, for example from a physician or other health professional, a hospital, a medical device or an in vitro diagnostic test.

36) The main establishment of a controller in the Union should be the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union, in which case that other establishment should be considered to be the main establishment. The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes and means of processing through stable arrangements. That criterion should not depend on whether the processing of personal data is carried out at that location. The presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute a main establishment and are therefore not determining criteria for a main establishment. The main establishment of the processor should be the place of its central

administration in the Union or, if it has no central administration in the Union, the place where the main processing activities take place in the Union. In cases involving both the controller and the processor, the competent lead supervisory authority should remain the supervisory authority of the Member State where the controller has its main establishment, but the supervisory authority of the processor should be considered to be a supervisory authority concerned and that supervisory authority should participate in the cooperation procedure provided for by this Regulation. In any case, the supervisory authorities of the Member State or Member States where the processor has one or more establishments should not be considered to be supervisory authorities concerned where the draft decision concerns only the controller. Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered to be the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking.

37) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exert a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. An undertaking which controls the processing of personal data in undertakings affiliated to it should be regarded, together with those undertakings, as a group of undertakings.

38) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

39) Any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. That principle concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed. Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or use of personal data and the equipment used for the processing.

40) In order for processing to be lawful, personal data should be processed on the basis of the consent of the data subject concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation, including the necessity for compliance with the legal obligation to which the controller is subject or the necessity for the performance of a contract to which the data subject is party or in

order to take steps at the request of the data subject prior to entering into a contract.

41) Where this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without prejudice to requirements pursuant to the constitutional order of the Member State concerned. However, such a legal basis or legislative measure should be clear and precise and its application should be foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union (the 'Court of Justice') and the European Court of Human Rights.

42) Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware of the fact that and the extent to which consent is given. In accordance with Council Directive 93/13/EEC a declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed, the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.

43) In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation. Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the

consent despite such consent not being necessary for such performance.

44) Processing should be lawful where it is necessary in the context of a contract or the intention to enter into a contract.

45) Where processing is carried out in accordance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority, the processing should have a basis in Union or Member State law. This Regulation does not require a specific law for each individual processing. A law as a basis for several processing operations based on a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority may be sufficient. It should also be for Union or Member State law to determine the purpose of processing. Furthermore, that law could specify the general conditions of this Regulation governing the lawfulness of personal data processing, establish specifications for determining the controller, the type of personal data which are subject to the processing, the data subjects concerned, the entities to which the personal data may be disclosed, the purpose limitations, the storage period and other measures to ensure lawful and fair processing. It should also be for Union or Member State law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public authority or another natural or legal person governed by public law, or, where it is in the public interest to do so, including for health purposes such as public health and social protection and the management of health care services, by private law, such as a professional association.

46) The processing of personal data should also be regarded to be lawful where it is necessary to protect an interest which is essential for the life of the data subject or that of another natural person. Processing of personal data based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis. Some types of processing may serve both important grounds of public interest and the vital interests of the data subject as for instance when processing is necessary for humanitarian purposes, including for monitoring epidemics and their spread or in situations of humanitarian emergencies, in particular in situations of natural and man-made disasters.

47) The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller. Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law for the legal basis for public authorities to process personal data, that legal basis should not apply to the processing by public authorities in the performance of their tasks. The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned. The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

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48) Controllers that are part of a group of undertakings or institutions affiliated to a central body may have a legitimate interest in transmitting personal data within the group of undertakings for internal administrative purposes, including the processing of clients' or employees' personal data. The general principles for the transfer of personal data, within a group of undertakings, to an undertaking located in a third country remain unaffected.

49) The processing of personal data to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted personal data, and the security of the related services offered by, or accessible via, those networks and systems, by public authorities, by computer emergency response teams (CERTs), computer security incident response teams (CSIRTs), by providers of electronic communications networks and services and by providers of security technologies and services, constitutes a legitimate interest of the data controller concerned. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping 'denial of service' attacks and damage to computer and electronic communication systems.

50) The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union or Member State law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations. The legal basis provided by Union or Member State law for the processing of personal data may also provide a legal basis for further processing. In order to ascertain whether a purpose of further processing is compatible with the purpose for which the personal data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account, inter alia: any link between those purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable

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expectations of data subjects based on their relationship with the controller as to their further use; the nature of the personal data; the consequences of the intended further processing for data subjects; and the existence of appropriate safeguards in both the original and intended further processing operations.

Where the data subject has given consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard, in particular, important objectives of general public interest, the controller should be allowed to further process the personal data irrespective of the compatibility of the purposes. In any case, the application of the principles set out in this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object, should be ensured. Indicating possible criminal acts or threats to public security by the controller and transmitting the relevant personal data in individual cases or in several cases relating to the same criminal act or threats to public security to a competent authority should be regarded as being in the legitimate interest pursued by the controller. However, such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.

51) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. Such personal data should not be processed, unless processing is allowed in specific cases set out in this Regulation, taking into account that Member States law may

lay down specific provisions on data protection in order to adapt the application of the rules of this Regulation for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. In addition to the specific requirements for such processing, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia, where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

52) Derogating from the prohibition on processing special categories of personal data should also be allowed when provided for in Union or Member State law and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where it is in the public interest to do so, in particular processing personal data in the field of employment law, social protection law including pensions and for health security, monitoring and alert purposes, the prevention or control of communicable diseases and other serious threats to health. Such a derogation may be made for health purposes, including public health and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. A derogation should also allow the processing of such personal data where necessary for the establishment, exercise or defence of legal claims, whether in court proceedings or in an administrative or out-of-court procedure.

53) Special categories of personal data which merit higher protection should be processed for health-related purposes only where necessary to achieve those purposes for the benefit of natural persons and society as a whole, in particular in the context of the management of health or social care services and systems, including processing by the management and central national health authorities

of such data for the purpose of quality control, management information and the general national and local supervision of the health or social care system, and ensuring continuity of health or social care and cross-border healthcare or health security, monitoring and alert purposes, or for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, based on Union or Member State law which has to meet an objective of public interest, as well as for studies conducted in the public interest in the area of public health. Therefore, this Regulation should provide for harmonised conditions for the processing of special categories of personal data concerning health, in respect of specific needs, in particular where the processing of such data is carried out for certain health-related purposes by persons subject to a legal obligation of professional secrecy. Union or Member State law should provide for specific and suitable measures so as to protect the fundamental rights and the personal data of natural persons. Member States should be allowed to maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health. However, this should not hamper the free flow of personal data within the Union when those conditions apply to cross-border processing of such data.

54) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. Such processing should be subject to suitable and specific measures so as to protect the rights and freedoms of natural persons. In that context, 'public health' should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council, namely all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers or insurance and banking companies.

55) Moreover, the processing of personal data by official authorities for the purpose of achieving the aims, laid down by constitutional law or by international public law, of officially recognised religious associations, is carried out on grounds of public interest.

56) Where in the course of electoral activities, the operation of the democratic system in a Member State requires that political parties compile personal data on people's political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.

57) If the personal data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. However, the controller should not refuse to take additional information provided by the data subject in order to support the exercise of his or her rights. Identification should include the digital identification of a data subject, for example through authentication mechanism such as the same credentials, used by the data subject to log-in to the on-line service offered by the data controller.

58) The principle of transparency requires that any information addressed to the public or to the data subject be concise, easily accessible and easy to understand, and that clear and plain language and, additionally, where appropriate, visualisation be used. Such information could be provided in electronic form, for example, when addressed to the public, through a website. This is of particular relevance in situations where the proliferation of actors and the technological complexity of practice make it difficult for the data subject to know and understand whether, by whom and for what purpose personal data relating to him or her are being collected, such as in the case of online advertising. Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.

59) Modalities should be provided for facilitating the exercise of the data subject's rights under this Regulation, including mechanisms

to request and, if applicable, obtain, free of charge, in particular, access to and rectification or erasure of personal data and the exercise of the right to object. The controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means. The controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests.

60) The principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes. The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed. Furthermore, the data subject should be informed of the existence of profiling and the consequences of such profiling. Where the personal data are collected from the data subject, the data subject should also be informed whether he or she is obliged to provide the personal data and of the consequences, where he or she does not provide such data. That information may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner, a meaningful overview of the intended processing. Where the icons are presented electronically, they should be machine-readable.

61) The information in relation to the processing of personal data relating to the data subject should be given to him or her at the time of collection from the data subject, or, where the personal data are obtained from another source, within a reasonable period, depending on the circumstances of the case. Where personal data can be legitimately disclosed to another recipient, the data subject should be informed when the personal data are first disclosed to the recipient. Where the controller intends to process the personal data for a purpose other than that for which they were collected, the controller should provide the data subject prior to that further processing with information on that other purpose and other necessary information. Where the origin of the personal data cannot be provided to the data subject because various sources have been used, general information should be provided.

62) However, it is not necessary to impose the obligation to provide information where the data subject already possesses the information, where the recording or disclosure of the personal data is expressly laid down by law or where the provision of information to the data subject proves to be impossible or would involve a disproportionate effort. The latter could in particular be the case where processing is carried out for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. In that regard, the number of data subjects, the age of the data and any appropriate safeguards adopted should be taken into consideration.

63) A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right easily and at reasonable intervals, in order to be aware of, and verify, the lawfulness of the processing. This includes the right for data subjects to have access to data concerning their health, for example the data in their medical records containing information such as diagnoses, examination results, assessments by treating physicians and any treatment or interventions provided. Every data subject should therefore have the right to know and obtain communication in particular with regard to the purposes for which the personal data are processed, where possible the period for which the personal data are processed, the recipients of the personal data, the logic involved in any automatic personal data processing and, at least when based on profiling, the consequences of such processing. Where possible, the controller should be able to provide remote access to a secure system which would provide the data subject with direct access to his or her personal data. That right should not adversely affect the rights or freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of those considerations should not be a refusal to provide all information to the data subject. Where the controller processes a large quantity of information concerning the data subject, the controller should be able to request that, before the information is delivered, the data subject specify the information or processing activities to which the request relates.

64) The controller should use all reasonable measures to verify the identity of a data subject who requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the sole purpose of being able to react to potential requests.

65) A data subject should have the right to have personal data concerning him or her rectified and a 'right to be forgotten' where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims.

66) To strengthen the right to be forgotten in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such personal data to erase any links to, or copies or replications of those personal data. In doing so, that controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the con-

trollers which are processing the personal data of the data subject's request.

67) Methods by which to restrict the processing of personal data could include, inter alia, temporarily moving the selected data to another processing system, making the selected personal data unavailable to users, or temporarily removing published data from a website. In automated filing systems, the restriction of processing should in principle be ensured by technical means in such a manner that the personal data are not subject to further processing operations and cannot be changed. The fact that the processing of personal data is restricted should be clearly indicated in the system.

68) To further strengthen the control over his or her own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to receive personal data concerning him or her which he or she has provided to a controller in a structured, commonly used, machine-readable and interoperable format, and to transmit it to another controller. Data controllers should be encouraged to develop interoperable formats that enable data portability. That right should apply where the data subject provided the personal data on the basis of his or her consent or the processing is necessary for the performance of a contract. It should not apply where processing is based on a legal ground other than consent or contract. By its very nature, that right should not be exercised against controllers processing personal data in the exercise of their public duties. It should therefore not apply where the processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller. The data subject's right to transmit or receive personal data concerning him or her should not create an obligation for the controllers to adopt or maintain processing systems which are technically compatible. Where, in a certain set of personal data, more than one data subject is concerned, the right to receive the personal data should be without prejudice to the rights and freedoms of other data subjects in accordance with this Regulation. Furthermore, that right should not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should,

in particular, not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract to the extent that and for as long as the personal data are necessary for the performance of that contract. Where technically feasible, the data subject should have the right to have the personal data transmitted directly from one controller to another.

69) Where personal data might lawfully be processed because processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, or on grounds of the legitimate interests of a controller or a third party, a data subject should, nevertheless, be entitled to object to the processing of any personal data relating to his or her particular situation. It should be for the controller to demonstrate that its compelling legitimate interest overrides the interests or the fundamental rights and freedoms of the data subject.

70) Where personal data are processed for the purposes of direct marketing, the data subject should have the right to object to such processing, including profiling to the extent that it is related to such direct marketing, whether with regard to initial or further processing, at any time and free of charge. That right should be explicitly brought to the attention of the data subject and presented clearly and separately from any other information.

71) The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her, such as automatic refusal of an online credit application or e-recruiting practices without any human intervention. Such processing includes 'profiling' that consists of any form of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the data subject's performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her. However, decision-making based on such

processing, including profiling, should be allowed where expressly authorised by Union or Member State law to which the controller is subject, including for fraud and tax-evasion monitoring and prevention purposes conducted in accordance with the regulations, standards and recommendations of Union institutions or national oversight bodies and to ensure the security and reliability of a service provided by the controller, or necessary for the entering or performance of a contract between the data subject and a controller, or when the data subject has given his or her explicit consent. In any case, such processing should be subject to suitable safeguards, which should include specific information to the data subject and the right to obtain human intervention, to express his or her point of view, to obtain an explanation of the decision reached after such assessment and to challenge the decision. Such measure should not concern a child.

In order to ensure fair and transparent processing in respect of the data subject, taking into account the specific circumstances and context in which the personal data are processed, the controller should use appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, in particular, that factors which result in inaccuracies in personal data are corrected and the risk of errors is minimised, secure personal data in a manner that takes account of the potential risks involved for the interests and rights of the data subject and that prevents, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or that result in measures having such an effect. Automated decision-making and profiling based on special categories of personal data should be allowed only under specific conditions.

72) Profiling is subject to the rules of this Regulation governing the processing of personal data, such as the legal grounds for processing or data protection principles. The European Data Protection Board established by this Regulation (the 'Board') should be able to issue guidance in that context.

73) Restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, the right to object, decisions based on profiling, as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or manmade disasters, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, or of breaches of ethics for regulated professions, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes. Those restrictions should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

74) The responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should be obliged to implement appropriate and effective measures and be able to demonstrate the compliance of processing activities with this Regulation, including the effectiveness of the measures. Those measures should take into account the nature, scope, context and purposes of the processing and the risk to the rights and freedoms of natural persons.

75) The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation,

loss of confidentiality of personal data protected by professional secrecy, unauthorised reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or prevented from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, in particular analysing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.

76) The likelihood and severity of the risk to the rights and freedoms of the data subject should be determined by reference to the nature, scope, context and purposes of the processing. Risk should be evaluated on the basis of an objective assessment, by which it is established whether data processing operations involve a risk or a high risk.

77) Guidance on the implementation of appropriate measures and on the demonstration of compliance by the controller or the processor, especially as regards the identification of the risk related to the processing, their assessment in terms of origin, nature, likelihood and severity, and the identification of best practices to mitigate the risk, could be provided in particular by means of approved codes of conduct, approved certifications, guidelines provided by the Board or indications provided by a data protection officer. The Board may also issue guidelines on processing operations that are considered to be unlikely to result in a high risk to the rights and freedoms of natural persons and indicate what measures may be sufficient in such cases to address such risk.

78) The protection of the rights and freedoms of natural persons with regard to the processing of personal data require that appropriate technical and organisational measures be taken to ensure that the requirements of this Regulation are met. In order to be able to demonstrate compliance with this Regulation, the controller should adopt internal policies and implement measures which meet in particular the principles of data protection by design and data protection by default. Such measures could consist, inter alia, of minimising the processing of personal data, pseudonymising personal data as soon as possible, transparency with regard to the functions and processing of personal data, enabling the data subject to monitor the data processing, enabling the controller to create and improve security features. When developing, designing, selecting and using applications, services and products that are based on the processing of personal data or process personal data to fulfil their task, producers of the products, services and applications should be encouraged to take into account the right to data protection when developing and designing such products, services and applications and, with due regard to the state of the art, to make sure that controllers and processors are able to fulfil their data protection obligations. The principles of data protection by design and by default should also be taken into consideration in the context of public tenders.

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79) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors, also in relation to the monitoring by and measures of supervisory authorities, requires a clear allocation of the responsibilities under this Regulation, including where a controller determines the purposes and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

80) Where a controller or a processor not established in the Union is processing personal data of data subjects who are in the Union whose processing activities are related to the offering of goods orservices, irrespective of whether a payment of the data subject is required, to such data subjects in the Union, or to the monitoring of their behaviour as far as their behaviour takes place within the Union, the controller or the processor should designate a representative, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offen-

ces, and 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 or if the controller is a public authority or body. The representative should act on behalf of the controller or the processor and may be addressed by any supervisory authority. The 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. The designated representative should be subject to enforcement proceedings in the event of non-compliance by the controller or processor.

81) To ensure compliance with the requirements of this Regulation in respect of the processing to be carried out by the processor on behalf of the controller, when entrusting a processor with processing activities, the controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation, including for the security of processing. The adherence of the processor to an approved code of conduct or an approved certification mechanism may be used as an element to demonstrate compliance with the obligations of the controller. The carrying-out of processing by a processor should be governed by a contract or other legal act under Union or Member State law, binding the processor to the controller, setting out the subject-matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects, taking into account the specific tasks and responsibilities of the processor in the context of the processing to be carried out and the risk to the rights and freedoms of the data subject. The controller and processor may choose to use an individual contract or standard contractual clauses which are adopted either directly by the Commission or by a supervisory authority in accordance with the consistency mechanism and then

adopted by the Commission. After the completion of the processing on behalf of the controller, the processor should, at the choice of the controller, return or delete the personal data, unless there is a requirement to store the personal data under Union or Member State law to which the processor is subject.

82) In order to demonstrate compliance with this Regulation, the controller or processor should maintain records of processing activities under its responsibility. Each controller and processor should be obliged to cooperate with the supervisory authority and make those records, on request, available to it, so that it might serve for monitoring those processing operations.

83) In order to maintain security and to prevent processing in infringement of this Regulation, the controller or processor should evaluate the risks inherent in the processing and implement measures to mitigate those risks, such as encryption. Those measures should ensure an appropriate level of security, including confidentiality, taking into account the state of the art and the costs of implementation in relation to the risks and the nature of the personal data to be protected. In assessing data security risk, consideration should be given to the risks that are presented by personal data processing, such as accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed which may in particular lead to physical, material or non-material damage.

84) In order to enhance compliance with this Regulation where processing operations are likely to result in a high risk to the rights and freedoms of natural persons, the controller should be responsible for the carrying-out of a data protection impact assessment to evaluate, in particular, the origin, nature, particularity and severity of that risk. The outcome of the assessment should be taken into account when determining the appropriate measures to be taken in order to demonstrate that the processing of personal data complies with this Regulation. Where a data-protection impact assessment indicates that processing operations involve a high risk which the controller cannot mitigate by appropriate measures in terms of available technology and costs of implementation, a consultation

of the supervisory authority should take place prior to the processing.

85) A personal data breach may, if not addressed in an appropriate and timely manner, result in physical, material or non-material damage to natural persons such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality of personal data protected by professional secrecy or any other significant economic or social disadvantage to the natural person concerned. Therefore, as soon as the controller becomes aware that a personal data breach has occurred, the controller should notify the personal data breach to the supervisory authority without undue delay and, where feasible, not later than 72 hours after having become aware of it, unless the controller is able to demonstrate, in accordance with the accountability principle, that the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where such notification cannot be achieved within 72 hours, the reasons for the delay should accompany the notification and information may be provided in phases without undue further delay.

86) The controller should communicate to the data subject a personal data breach, without undue delay, where that personal data breach is likely to result in a high risk to the rights and freedoms of the natural person in order to allow him or her to take the necessary precautions. The communication should describe the nature of the personal data breach as well as recommendations for the natural person concerned to mitigate potential adverse effects. Such communications to data subjects should be made as soon as reasonably feasible and in close cooperation with the supervisory authority, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities. For example, the need to mitigate an immediate risk of damage would call for prompt communication with data subjects whereas the need to implement appropriate measures against continuing or similar personal data breaches may justify more time for communication.

87) It should be ascertained whether all appropriate technological protection and organisational measures have been implemented to

establish immediately whether a personal data breach has taken place and to inform promptly the supervisory authority and the data subject. The fact that the notification was made without undue delay should be established taking into account in particular the nature and gravity of the personal data breach and its consequences and adverse effects for the data subject. Such notification may result in an intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation.

88) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of that breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law-enforcement authorities where early disclosure could unnecessarily hamper the investigation of the circumstances of a personal data breach.

89) Directive 95/46/EC provided for a general obligation to notify the processing of personal data to the supervisory authorities. While that obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Such indiscriminate general notification obligations should therefore be abolished, and replaced by effective procedures and mechanisms which focus instead on those types of processing operations which are likely to result in a high risk to the rights and freedoms of natural persons by virtue of their nature, scope, context and purposes. Such types of processing operations may be those which in, particular, involve using new technologies, or are of a new kind and where no data protection impact assessment has been carried out before by the controller, or where they become necessary in the light of the time that has elapsed since the initial processing.

90) In such cases, a data protection impact assessment should be carried out by the controller prior to the processing in order to assess the particular likelihood and severity of the high risk, taking into account the nature, scope, context and purposes of the processing

and the sources of the risk. That impact assessment should include, in particular, the measures, safeguards and mechanisms envisaged for mitigating that risk, ensuring the protection of personal data and demonstrating compliance with this Regulation.

91) This should in particular apply to large-scale processing operations which aim to process a considerable amount of personal data at regional, national or supranational level and which could affect a large number of data subjects and which are likely to result in a high risk, for example, on account of their sensitivity, where in accordance with the achieved state of technological knowledge a new technology is used on a large scale as well as to other processing operations which result in a high risk to the rights and freedoms of data subjects, in particular where those operations render it more difficult for data subjects to exercise their rights. A data protection impact assessment should also be made where personal data are processed for taking decisions regarding specific natural persons following any systematic and extensive evaluation of personal aspects relating to natural persons based on profiling those data or following the processing of special categories of personal data, biometric data, or data on criminal convictions and offences or related security measures. A data protection impact assessment is equally required for monitoring publicly accessible areas on a large scale, especially when using optic-electronic devices or for any other operations where the competent supervisory authority considers that the processing is likely to result in a high risk to the rights and freedoms of data subjects, in particular because they prevent data subjects from exercising a right or using a service or a contract, or because they are carried out systematically on a large scale. The processing of personal data should not be considered to be on a large scale if the processing concerns personal data from patients or clients by an individual physician, other health care professional or lawyer. In such cases, a data protection impact assessment should not be mandatory.

81-90

92) There are circumstances under which it may be reasonable and economical for the subject of a data protection impact assessment to be broader than a single project, for example where public authorities or bodies intend to establish a common application or processing platform or where several controllers plan to introduce a

common application or processing environment across an industry sector or segment or for a widely used horizontal activity.

93) In the context of the adoption of the Member State law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question, Member States may deem it necessary to carry out such assessment prior to the processing activities.

94) Where a data protection impact assessment indicates that the processing would, in the absence of safeguards, security measures and mechanisms to mitigate the risk, result in a high risk to the rights and freedoms of natural persons and the controller is of the opinion that the risk cannot be mitigated by reasonable means in terms of available technologies and costs of implementation, the supervisory authority should be consulted prior to the start of processing activities. Such high risk is likely to result from certain types of processing and the extent and frequency of processing, which may result also in a realisation of damage or interference with the rights and freedoms of the natural person. The supervisory authority should respond to the request for consultation within a specified period. However, the absence of a reaction of the supervisory authority within that period should be without prejudice to any intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation, including the power to prohibit processing operations. As part of that consultation process, the outcome of a data protection impact assessment carried out with regard to the processing at issue may be submitted to the supervisory authority, in particular the measures envisaged to mitigate the risk to the rights and freedoms of natural persons.

91-100

95) The processor should assist the controller, where necessary and upon request, in ensuring compliance with the obligations deriving from the carrying out of data protection impact assessments and from prior consultation of the supervisory authority.

96) A consultation of the supervisory authority should also take place in the course of the preparation of a legislative or regulatory measure which provides for the processing of personal data, in order to

ensure compliance of the intended processing with this Regulation and in particular to mitigate the risk involved for the data subject.

97) Where the processing is carried out by a public authority, except for courts or independent judicial authorities when acting in their judicial capacity, where, in the private sector, processing is carried out by a controller whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects on a large scale, or where the core activities of the controller or the processor consist of processing on a large scale of special categories of personal data and data relating to criminal convictions and offences, a person with expert knowledge of data protection law and practices should assist the controller or processor to monitor internal compliance with this Regulation. In the private sector, the core activities of a controller relate to its primary activities and do not relate to the processing of personal data as ancillary activities. The necessary level of expert knowledge should be determined in particular according to the data processing operations carried out and the protection required for the personal data processed by the controller or the processor. Such data protection officers, 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.

98) Associations or other bodies representing categories of controllers or processors should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors and the specific needs of micro, small and medium enterprises. In particular, such codes of conduct could calibrate the obligations of controllers and processors, taking into account the risk likely to result from the processing for the rights and freedoms of natural persons.

99) When drawing up a code of conduct, or when amending or extending such a code, associations and other bodies representing categories of controllers or processors should consult relevant stakeholders, including data subjects where feasible, and have regard to submissions received and views expressed in response to such consultations.

100) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms and data protection seals and marks should be encouraged, allowing data subjects to quickly assess the level of data protection of relevant products and services.

101) Flows of personal data to and from countries outside the Union and international organisations are necessary for the expansion of international trade and international cooperation. The increase in such flows has raised new challenges and concerns with regard to the protection of personal data. However, when personal data are transferred from the Union to controllers, processors or other recipients in third countries or to international organisations, the level of protection of natural persons ensured in the Union by this Regulation should not be undermined, including in cases of onward transfers of personal data from the third country or international organisation to controllers, processors in the same or another third country or international organisation. In any event, transfers to third countries and international organisations may only be carried out in full compliance with this Regulation. A transfer could take place only if, subject to the other provisions of this Regulation, the conditions laid down in the provisions of this Regulation relating to the transfer of personal data to third countries or international organisations are complied with by the controller or processor.

102) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects. Member States may conclude international agreements which involve the transfer of personal data to third countries or international organisations, as far as such agreements do not affect this Regulation or any other provisions of Union law and include an appropriate level of protection for the fundamental rights of the data subjects.

103) The Commission may decide with effect for the entire Union that a third country, a territory or specified sector within a third country, or an international organisation, offers an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third country or international orga-

nisation which is considered to provide such level of protection. In such cases, transfers of personal data to that third country or international organisation may take place without the need to obtain any further authorisation. The Commission may also decide, having given notice and a full statement setting out the reasons to the third country or international organisation, to revoke such a decision.

104) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should, in its assessment of the third country, or of a territory or specified sector within a third country, take into account how a particular third country respects the rule of law, access to justice as well as international human rights norms and standards and its general and sectoral law, including legislation concerning public security, defence and national security as well as public order and criminal law. The adoption of an adequacy decision with regard to a territory or a specified sector in a third country should take into account clear and objective criteria, such as specific processing activities and the scope of applicable legal standards and legislation in force in the third country. The third country should offer guarantees ensuring an adequate level of protection essentially equivalent to that ensured within the Union, in particular where personal data are processed in one or several specific sectors. In particular, the third country should ensure effective independent data protection supervision and should provide for cooperation mechanisms with the Member States' data protection authorities, and the data subjects should be provided with effective and enforceable rights and effective administrative and judicial redress.

105) Apart from the international commitments the third country or international organisation has entered into, the Commission should take account of obligations arising from the third country's or international organisation's participation in multilateral or regional systems in particular in relation to the protection of personal data, as well as the implementation of such obligations. In particular, the third country's accession to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its Additional Protocol should be taken into account. The Commission should consult the

Board when assessing the level of protection in third countries or international organisations.

106) The Commission should monitor the functioning of decisions on the level of protection in a third country, a territory or specified sector within a third country, or an international organisation, and monitor the functioning of decisions adopted on the basis of Article 25(6) or Article 26(4) of Directive 95/46/EC. In its adequacy decisions, the Commission should provide for a periodic review mechanism of their functioning. That periodic review should be conducted in consultation with the third country or international organisation in question and take into account all relevant developments in the third country or international organisation. For the purposes of monitoring and of carrying out the periodic reviews, the Commission should take into consideration the views and findings of the European Parliament and of the Council as well as of other relevant bodies and sources. The Commission should evaluate, within a reasonable time, the functioning of the latter decisions and report any relevant findings to the Committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council as established under this Regulation, to the European Parliament and to the Council.

107) The Commission may recognise that a third country, a territory or a specified sector within a third country, or an international organisation no longer ensures an adequate level of data protection. Consequently the transfer of personal data to that third country or international organisation should be prohibited, unless the requirements in this Regulation relating to transfers subject to appropriate safeguards, including binding corporate rules, and derogations for specific situations are fulfilled. In that case, provision should be made for consultations between the Commission and such third countries or international organisations. The Commission should, in a timely manner, inform the third country or international organisation of the reasons and enter into consultations with it in order to remedy the situation.

108) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data

subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority. Those safeguards should ensure compliance with data protection requirements and the rights of the data subjects appropriate to processing within the Union, including the availability of enforceable data subject rights and of effective legal remedies, including to obtain effective administrative or judicial redress and to claim compensation, in the Union or in a third country. They should relate in particular to compliance with the general principles relating to personal data processing, the principles of data protection by design and by default. Transfers may also be carried out by public authorities or bodies with public authorities or bodies in third countries or with international organisations with corresponding duties or functions, including on the basis of provisions to be inserted into administrative arrangements, such as a memorandum of understanding, providing for enforceable and effective rights for data subjects. Authorisation by the competent supervisory authority should be obtained when the safeguards are provided for in administrative arrangements that are not legally binding.

109) The possibility for the controller or processor to use standard data-protection clauses adopted by the Commission or by a supervisory authority should prevent controllers or processors neither from including the standard data-protection clauses in a wider contract, such as a contract between the processor and another processor, nor from adding other clauses or additional safeguards provided that they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. Controllers and processors should be encouraged to provide additional safeguards via contractual commitments that supplement standard protection clauses.

110) A group of undertakings, or a group of enterprises engaged in a joint economic activity, should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same group of undertakings, or group of enterprises engaged in a joint economic activity, provided that

such corporate rules include all essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.

111) Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his or her explicit consent, where the transfer is occasional and necessary in relation to a contract or a legal claim, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure, including procedures before regulatory bodies. Provision should also be made for the possibility for transfers where important grounds of public interest laid down by Union or Member State law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In the latter case, such a transfer should not involve the entirety of the personal data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or, if they are to be the recipients, taking into full account the interests and fundamental rights of the data subject.

112) Those derogations should in particular apply to data transfers required and necessary for important reasons of public interest, for example in cases of international data exchange between competition authorities, tax or customs administrations, between financial supervisory authorities, between services competent for social security matters, or for public health, for example in the case of contact tracing for contagious diseases or in order to reduce and/or eliminate doping in sport. A transfer of personal data should also be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's or another person's vital interests, including physical integrity or life, if the data subject is incapable of giving consent. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of data to a third country or an international organisation. Member States should notify such provisions to the Commission. Any transfer to an international humanitarian organisation of personal data of a data subject who is physically or legally incapable of giving consent,

with a view to accomplishing a task incumbent under the Geneva Conventions or to complying with international humanitarian law applicable in armed conflicts, could be considered to be necessary for an important reason of public interest or because it is in the vital interest of the data subject.

113) Transfers which can be qualified as not repetitive and that only concern a limited number of data subjects, could also be possible for the purposes of the compelling legitimate interests pursued by the controller, when those interests are not overridden by the interests or rights and freedoms of the data subject and when the controller has assessed all the circumstances surrounding the data transfer. The controller should give particular consideration to the nature of the personal data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country of final destination, and should provide suitable safeguards to protect fundamental rights and freedoms of natural persons with regard to the processing of their personal data. Such transfers should be possible only in residual cases where none of the other grounds for transfer are applicable. For scientific or historical research purposes or statistical purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration. The controller should inform the supervisory authority and the data subject about the transfer.

114) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with enforceable and effective rights as regards the processing of their data in the Union once those data have been transferred so that that they will continue to benefit from fundamental rights and safeguards.

115) Some third countries adopt laws, regulations and other legal acts which purport to directly regulate the processing activities of natural and legal persons under the jurisdiction of the Member States. This may include judgments of courts or tribunals or decisions of administrative authorities in third countries requiring a controller or processor to transfer or disclose personal data, and which are

not based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State. The extraterritorial application of those laws, regulations and other legal acts may be in breach of international law and may impede the attainment of the protection of natural persons ensured in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may be the case, inter alia, where disclosure is necessary for an important ground of public interest recognised in Union or Member State law to which the controller is subject.

116) When personal data moves across borders outside the Union it may put at increased risk the ability of natural persons to exercise data protection rights in particular to protect themselves from the unlawful use or disclosure of that information. At the same time, supervisory authorities may find that they are unable to pursue complaints or conduct investigations relating to the activities outside their borders. Their efforts to work together in the cross-border context may also be hampered by insufficient preventative or remedial powers, inconsistent legal regimes, and practical obstacles like resource constraints. Therefore, there is a need to promote closer cooperation among data protection supervisory authorities to help them exchange information and carry out investigations with their international counterparts. For the purposes of developing international cooperation mechanisms to facilitate and provide international mutual assistance for the enforcement of legislation for the protection of personal data, the Commission and the supervisory authorities should exchange information and cooperate in activities related to the exercise of their powers with competent authorities in third countries, based on reciprocity and in accordance with this Regulation.

117) The establishment of supervisory authorities in Member States, empowered to perform their tasks and exercise their powers with complete independence, is an essential component of the protection of natural persons with regard to the processing of their personal data. Member States should be able to establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure.

118) The independence of supervisory authorities should not mean that the supervisory authorities cannot be subject to control or monitoring mechanisms regarding their financial expenditure or to judicial review.

119) Where a Member State establishes several supervisory authorities, it should establish by law mechanisms for ensuring the effective participation of those supervisory authorities in the consistency mechanism. That Member State should in particular designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the mechanism, to ensure swift and smooth cooperation with other supervisory authorities, the Board and the Commission.

120) Each supervisory authority should be provided with the financial and human resources, premises and infrastructure necessary for the effective performance of their tasks, including those related to mutual assistance and cooperation with other supervisory authorities throughout the Union. Each supervisory authority should have a separate, public annual budget, which may be part of the overall state or national budget.

121) The general conditions for the member or members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members are to be appointed, by means of a transparent procedure, either by the parliament, government or the head of State of the Member State on the basis of a proposal from the government, a member of the government, the parliament or a chamber of the parliament, or by an independent body entrusted under Member State law. In order to ensure the independence of the supervisory authority, the member or members should act with integrity, refrain from any action that is incompatible with their duties and should not, during their term of office, engage in any incompatible occupation, whether gainful or not. The supervisory authority should have its own staff, chosen by the supervisory authority or an independent body established by Member State law, which should be subject to the exclusive direction of the member or members of the supervisory authority.

122) Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the tasks conferred on it in accordance with this Regulation. This should cover in particular the processing in the context of the activities of an establishment of the controller or processor on the territory of its own Member State, the processing of personal data carried out by public authorities or private bodies acting in the public interest, processing affecting data subjects on its territory or processing carried out by a controller or processor not established in the Union when targeting data subjects residing on its territory. This should include handling complaints lodged by a data subject, conducting investigations on the application of this Regulation and promoting public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data.

123) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For that purpose, the supervisory authorities should cooperate with each other and with the Commission, without the need for any agreement between Member States on the provision of mutual assistance or on such cooperation.

124) Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union and the controller or processor is established in more than one Member State, or where processing taking place in the context of the activities of a single establishment of a controller or processor in the Union substantially affects or is likely to substantially affect data subjects in more than one Member State, the supervisory authority for the main establishment of the controller or processor or for the single establishment of the controller or processor should act as lead authority. It should cooperate with the other authorities concerned, because the controller or processor has an establishment on the territory of their Member State, because data subjects residing on their territory are substantially affected, or because a complaint has been lodged with them. Also where a data subject not residing in that Member State has lodged

a complaint, the supervisory authority with which such complaint has been lodged should also be a supervisory authority concerned. Within its tasks to issue guidelines on any question covering the application of this Regulation, the Board should be able to issue guidelines in particular on the criteria to be taken into account in order to ascertain whether the processing in question substantially affects data subjects in more than one Member State and on what constitutes a relevant and reasoned objection.

125) The lead authority should be competent to adopt binding decisions regarding measures applying the powers conferred on it in accordance with this Regulation. In its capacity as lead authority, the supervisory authority should closely involve and coordinate the supervisory authorities concerned in the decision-making process. Where the decision is to reject the complaint by the data subject in whole or in part, that decision should be adopted by the supervisory authority with which the complaint has been lodged.

126) The decision should be agreed jointly by the lead supervisory authority and the supervisory authorities concerned and should be directed towards the main or single establishment of the controller or processor and be binding on the controller and processor. The controller or processor should take the necessary measures to ensure compliance with this Regulation and the implementation of the decision notified by the lead supervisory authority to the main establishment of the controller or processor as regards the processing activities in the Union.

127) Each supervisory authority not acting as the lead supervisory authority should be competent to handle local cases where the controller or processor is established in more than one Member State, but the subject matter of the specific processing concerns only processing carried out in a single Member State and involves only data subjects in that single Member State, for example, where the subject matter concerns the processing of employees' personal data in the specific employment context of a Member State. In such cases, the supervisory authority should inform the lead supervisory authority without delay about the matter. After being informed, the lead supervisory authority should decide, whether it will handle the case pursuant to the provision on cooperation between the lead

supervisory authority and other supervisory authorities concerned ('one-stop-shop mechanism'), or whether the supervisory authority which informed it should handle the case at local level. When deciding whether it will handle the case, the lead supervisory authority should take into account whether there is an establishment of the controller or processor in the Member State of the supervisory authority which informed it in order to ensure effective enforcement of a decision vis-à-vis the controller or processor. Where the lead supervisory authority decides to handle the case, the supervisory authority which informed it should have the possibility to submit a draft for a decision, of which the lead supervisory authority should take utmost account when preparing its draft decision in that one-stop-shop mechanism.

128) The rules on the lead supervisory authority and the one-stop-shop mechanism should not apply where the processing is carried out by public authorities or private bodies in the public interest. In such cases the only supervisory authority competent to exercise the powers conferred to it in accordance with this Regulation should be the supervisory authority of the Member State where the public authority or private body is established.

129) In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have in each Member State the same tasks and effective powers, including powers of investigation, corrective powers and sanctions, and authorisation and advisory powers, in particular in cases of complaints from natural persons, and without prejudice to the powers of prosecutorial authorities under Member State law, to bring infringements of this Regulation to the attention of the judicial authorities and engage in legal proceedings. Such powers should also include the power to impose a temporary or definitive limitation, including a ban, on processing. Member States may specify other tasks related to the protection of personal data under this Regulation. The powers of supervisory authorities should be exercised in accordance with appropriate procedural safeguards set out in Union and Member State law, impartially, fairly and within a reasonable time. In particular each measure should be appropriate, necessary and proportionate in view of ensuring compliance with this Regulation, taking into account the circumstances of each indi-

vidual case, respect the right of every person to be heard before any individual measure which would affect him or her adversely is taken and avoid superfluous costs and excessive inconveniences for the persons concerned. Investigatory powers as regards access to premises should be exercised in accordance with specific requirements in Member State procedural law, such as the requirement to obtain a prior judicial authorisation. Each legally binding measure of the supervisory authority should be in writing, be clear and unambiguous, indicate the supervisory authority which has issued the measure, the date of issue of the measure, bear the signature of the head, or a member of the supervisory authority authorised by him or her, give the reasons for the measure, and refer to the right of an effective remedy. This should not preclude additional requirements pursuant to Member State procedural law. The adoption of a legally binding decision implies that it may give rise to judicial review in the Member State of the supervisory authority that adopted the decision.

130) Where the supervisory authority with which the complaint has been lodged is not the lead supervisory authority, the lead supervisory authority should closely cooperate with the supervisory authority with which the complaint has been lodged in accordance with the provisions on cooperation and consistency laid down in this Regulation. In such cases, the lead supervisory authority should, when taking measures intended to produce legal effects, including the imposition of administrative fines, take utmost account of the view of the supervisory authority with which the complaint has been lodged and which should remain competent to carry out any investigation on the territory of its own Member State in liaison with the competent supervisory authority.

121-130

131) Where another supervisory authority should act as a lead supervisory authority for the processing activities of the controller or processor but the concrete subject matter of a complaint or the possible infringement concerns only processing activities of the controller or processor in the Member State where the complaint has been lodged or the possible infringement detected and the matter does not substantially affect or is not likely to substantially affect data subjects in other Member States, the supervisory authority receiving a complaint or detecting or being informed otherwise of situ-

ations that entail possible infringements of this Regulation should seek an amicable settlement with the controller and, if this proves unsuccessful, exercise its full range of powers. This should include: specific processing carried out in the territory of the Member State of the supervisory authority or with regard to data subjects on the territory of that Member State; processing that is carried out in the context of an offer of goods or services specifically aimed at data subjects in the territory of the Member State of the supervisory authority; or processing that has to be assessed taking into account relevant legal obligations under Member State law.

132) Awareness-raising activities by supervisory authorities addressed to the public should include specific measures directed at controllers and processors, including micro, small and medium-sized enterprises, as well as natural persons in particular in the educational context.

133) The supervisory authorities should assist each other in performing their tasks and provide mutual assistance, so as to ensure the consistent application and enforcement of this Regulation in the internal market. A supervisory authority requesting mutual assistance may adopt a provisional measure if it receives no response to a request for mutual assistance within one month of the receipt of that request by the other supervisory authority.

134) Each supervisory authority should, where appropriate, participate in joint operations with other supervisory authorities. The requested supervisory authority should be obliged to respond to the request within a specified time period.

131-140

135) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for cooperation between the supervisory authorities should be established. That mechanism should in particular apply where a supervisory authority intends to adopt a measure intended to produce legal effects as regards processing operations which substantially affect a significant number of data subjects in several Member States. It should also apply where any supervisory authority concerned or the Commission requests that such matter should be handled in the consistency mechanism. That mechanism should be without prejudice to

any measures that the Commission may take in the exercise of its powers under the Treaties.

136) In applying the consistency mechanism, the Board should, within a determined period of time, issue an opinion, if a majority of its members so decides or if so requested by any supervisory authority concerned or the Commission. The Board should also be empowered to adopt legally binding decisions where there are disputes between supervisory authorities. For that purpose, it should issue, in principle by a two-thirds majority of its members, legally binding decisions in clearly specified cases where there are conflicting views among supervisory authorities, in particular in the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned on the merits of the case, in particular whether there is an infringement of this Regulation.

137) There may be an urgent need to act in order to protect the rights and freedoms of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. A supervisory authority should therefore be able to adopt duly justified provisional measures on its territory with a specified period of validity which should not exceed three months.

138) The application of such mechanism should be a condition for the lawfulness of a measure intended to produce legal effects by a supervisory authority in those cases where its application is mandatory. In other cases of cross-border relevance, the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned should be applied and mutual assistance and joint operations might be carried out between the supervisory authorities concerned on a bilateral or multilateral basis without triggering the consistency mechanism.

131-140

139) In order to promote the consistent application of this Regulation, the Board should be set up as an independent body of the Union. To fulfil its objectives, the Board should have legal personality. The Board should be represented by its Chair. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of the head of a supervisory authority of each Member State and the European Data Protection Supervisor or their respective representatives. The Commission should participate in the Board's activities without voting rights and the European Data Protection Supervisor should have specific voting rights. The Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the Commission, in particular on the level of protection in third countries or international organisations, and promoting cooperation of the supervisory authorities throughout the Union. The Board should act independently when performing its tasks.

140) The Board should be assisted by a secretariat provided by the European Data Protection Supervisor. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation should perform its tasks exclusively under the instructions of, and report to, the Chair of the Board.

141) Every data subject should have the right to lodge a complaint with a single supervisory authority, in particular in the Member State of his or her habitual residence, and the right to an effective judicial remedy in accordance with Article 47 of the Charter if the data subject considers that his or her rights under this Regulation are infringed or where the supervisory authority does not act on a complaint, partially or wholly rejects or dismisses a complaint or does not act where such action is necessary to protect the rights of the data subject. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can also be completed electronically, without excluding other means of communication.

141-150

142) Where a data subject considers that his or her rights under this Regulation are infringed, he or she should have the right to mandate a not-for-profit body, organisation or association which is constitu-

ted in accordance with the law of a Member State, has statutory objectives which are in the public interest and is active in the field of the protection of personal data to lodge a complaint on his or her behalf with a supervisory authority, exercise the right to a judicial remedy on behalf of data subjects or, if provided for in Member State law, exercise the right to receive compensation on behalf of data subjects. A Member State may provide for such a body, organisation or association to have the right to lodge a complaint in that Member State, independently of a data subject's mandate, and the right to an effective judicial remedy where it has reasons to consider that the rights of a data subject have been infringed as a result of the processing of personal data which infringes this Regulation. That body, organisation or association may not be allowed to claim compensation on a data subject's behalf independently of the data subject's mandate.

143) Any natural or legal person has the right to bring an action for annulment of decisions of the Board before the Court of Justice under the conditions provided for in Article 263 TFEU. As addressees of such decisions, the supervisory authorities concerned which wish to challenge them have to bring action within two months of being notified of them, in accordance with Article 263 TFEU. Where decisions of the Board are of direct and individual concern to a controller, processor or complainant, the latter may bring an action for annulment against those decisions within two months of their publication on the website of the Board, in accordance with Article 263 TFEU. Without prejudice to this right under Article 263 TFEU, each natural or legal person should have an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning that person. Such a decision concerns in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, the right to an effective judicial remedy does not encompass measures taken by supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State where the supervisory authority is established and should be conducted in accordance with that Member State's procedural law. Those courts should exercise full jurisdiction, which should include jurisdiction to examine all questions of fact and law relevant to the dispute before them.

Where a complaint has been rejected or dismissed by a supervisory authority, the complainant may bring proceedings before the courts in the same Member State. In the context of judicial remedies relating to the application of this Regulation, national courts which consider a decision on the question necessary to enable them to give judgment, may, or in the case provided for in Article 267 TFEU, must, request the Court of Justice to give a preliminary ruling on the interpretation of Union law, including this Regulation. Furthermore, where a decision of a supervisory authority implementing a decision of the Board is challenged before a national court and the validity of the decision of the Board is at issue, that national court does not have the power to declare the Board's decision invalid but must refer the question of validity to the Court of Justice in accordance with Article 267 TFEU as interpreted by the Court of Justice, where it considers the decision invalid. However, a national court may not refer a question on the validity of the decision of the Board at the request of a natural or legal person which had the opportunity to bring an action for annulment of that decision, in particular if it was directly and individually concerned by that decision, but had not done so within the period laid down in Article 263 TFEU.

144) Where a court seized of proceedings against a decision by a supervisory authority has reason to believe that proceedings concerning the same processing, such as the same subject matter as regards processing by the same controller or processor, or the same cause of action, are brought before a competent court in another Member State, it should contact that court in order to confirm the existence of such related proceedings. If related proceedings are pending before a court in another Member State, any court other than the court first seized may stay its proceedings or may, on request of one of the parties, decline jurisdiction in favour of the court first seized if that court has jurisdiction over the proceedings in question and its law permits the consolidation of such related proceedings. Proceedings are deemed to be related where they are so closely connected that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

145) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where the data subject resides, unless the controller is a public authority of a Member State acting in the exercise of its public powers.

146) The controller or processor should compensate any damage which a person may suffer as a result of processing that infringes this Regulation. The controller or processor should be exempt from liability if it proves that it is not in any way responsible for the damage. The concept of damage should be broadly interpreted in the light of the case-law of the Court of Justice in a manner which fully reflects the objectives of this Regulation. This is without prejudice to any claims for damage deriving from the violation of other rules in Union or Member State law. Processing that infringes this Regulation also includes processing that infringes delegated and implementing acts adopted in accordance with this Regulation and Member State law specifying rules of this Regulation. Data subjects should receive full and effective compensation for the damage they have suffered. Where controllers or processors are involved in the same processing, each controller or processor should be held liable for the entire damage. However, where they are joined to the same judicial proceedings, in accordance with Member State law, compensation may be apportioned according to the responsibility of each controller or processor for the damage caused by the processing, provided that full and effective compensation of the data subject who suffered the damage is ensured. Any controller or processor which has paid full compensation may subsequently institute recourse proceedings against other controllers or processors involved in the same processing.

147) Where specific rules on jurisdiction are contained in this Regulation, in particular as regards proceedings seeking a judicial remedy including compensation, against a controller or processor, general jurisdiction rules such as those of Regulation (EU) No 1215/2012 of the European Parliament and of the Council should not prejudice the application of such specific rules.

148) In order to strengthen the enforcement of the rules of this Regulation, penalties including administrative fines should be imposed for any infringement of this Regulation, in addition to, or instead of appropriate measures imposed by the supervisory authority pursuant to this Regulation. In a case of a minor infringement or if the fine likely to be imposed would constitute a disproportionate burden to a natural person, a reprimand may be issued instead of a fine. Due regard should however be given to the nature, gravity and duration of the infringement, the intentional character of the infringement, actions taken to mitigate the damage suffered, degree of responsibility or any relevant previous infringements, the manner in which the infringement became known to the supervisory authority, compliance with measures ordered against the controller or processor, adherence to a code of conduct and any other aggravating or mitigating factor. The imposition of penalties including administrative fines should be subject to appropriate procedural safeguards in accordance with the general principles of Union law and the Charter, including effective judicial protection and due process.

149) Member States should be able to lay down the rules on criminal penalties for infringements of this Regulation, including for infringements of national rules adopted pursuant to and within the limits of this Regulation. Those criminal penalties may also allow for the deprivation of the profits obtained through infringements of this Regulation. However, the imposition of criminal penalties for infringements of such national rules and of administrative penalties should not lead to a breach of the principle of ne bis in idem, as interpreted by the Court of Justice.

150) In order to strengthen and harmonise administrative penalties for infringements of this Regulation, each supervisory authority should have the power to impose administrative fines. This Regulation should indicate infringements and the upper limit and criteria for setting the related administrative fines, which should be determined by the competent supervisory authority in each individual case, taking into account all relevant circumstances of the specific situation, with due regard in particular to the nature, gravity and duration of the infringement and of its consequences and the measures taken to ensure compliance with the obligations under this Regulation and to prevent or mitigate the consequences of the

infringement. Where administrative fines are imposed on an undertaking, an undertaking should be understood to be an undertaking in accordance with Articles 101 and 102 TFEU for those purposes. Where administrative fines are imposed on persons that are not an undertaking, the supervisory authority should take account of the general level of income in the Member State as well as the economic situation of the person in considering the appropriate amount of the fine. The consistency mechanism may also be used to promote a consistent application of administrative fines. It should be for the Member States to determine whether and to which extent public authorities should be subject to administrative fines. Imposing an administrative fine or giving a warning does not affect the application of other powers of the supervisory authorities or of other penalties under this Regulation.

151) The legal systems of Denmark and Estonia do not allow for administrative fines as set out in this Regulation. The rules on administrative fines may be applied in such a manner that in Denmark the fine is imposed by competent national courts as a criminal penalty and in Estonia the fine is imposed by the supervisory authority in the framework of a misdemeanour procedure, provided that such an application of the rules in those Member States has an equivalent effect to administrative fines imposed by supervisory authorities. Therefore the competent national courts should take into account the recommendation by the supervisory authority initiating the fine. In any event, the fines imposed should be effective, proportionate and dissuasive.

152) Where this Regulation does not harmonise administrative penalties or where necessary in other cases, for example in cases of serious infringements of this Regulation, Member States should implement a system which provides for effective, proportionate and dissuasive penalties. The nature of such penalties, criminal or administrative, should be determined by Member State law.

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153) Member States law should reconcile the rules governing freedom of expression and information, including journalistic, academic, artistic and or literary expression with the right to the protection of personal data pursuant to this Regulation. The processing of personal data solely for journalistic purposes, or for the purposes

of academic, artistic or literary expression should be subject to derogations or exemptions from certain provisions of this Regulation if necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information, as enshrined in Article 11 of the Charter. This should apply in particular to the processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures which lay down the exemptions and derogations necessary for the purpose of balancing those fundamental rights. Member States should adopt such exemptions and derogations on general principles, the rights of the data subject, the controller and the processor, the transfer of personal data to third countries or international organisations, the independent supervisory authorities, cooperation and consistency, and specific data-processing situations. Where such exemptions or derogations differ from one Member State to another, the law of the Member State to which the controller is subject should apply. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly.

154) This Regulation allows the principle of public access to official documents to be taken into account when applying this Regulation. Public access to official documents may be considered to be in the public interest. Personal data in documents held by a public authority or a public body should be able to be publicly disclosed by that authority or body if the disclosure is provided for by Union or Member State law to which the public authority or public body is subject. Such laws should reconcile public access to official documents and the reuse of public sector information with the right to the protection of personal data and may therefore provide for the necessary reconciliation with the right to the protection of personal data pursuant to this Regulation. The reference to public authorities and bodies should in that context include all authorities or other bodies covered by Member State law on public access to documents. Directive 2003/98/EC of the European Parliament and of the Council leaves intact and in no way affects the level of protection of natural persons with regard to the processing of personal data under the provisions of Union and Member State law, and in particular does not alter the obligations and rights set out in this Regulation. In

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particular, that Directive should not apply to documents to which access is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been provided for by law as being incompatible with the law concerning the protection of natural persons with regard to the processing of personal data.

155) Member State law or collective agreements, including 'works agreements', may provide for specific rules on the processing of employees' personal data in the employment context, in particular for the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee, the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

156) The processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be subject to appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation. Those safeguards should ensure that technical and organisational measures are in place in order to ensure, in particular, the principle of data minimisation. The further processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is to be carried out when the controller has assessed the feasibility to fulfil those purposes by processing data which do not permit or no longer permit the identification of data subjects, provided that appropriate safeguards exist (such as, for instance, pseudonymisation of the data). Member States should provide for appropriate safeguards for the processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. Member States should be authorised to provide, under specific conditions and subject to appropriate safeguards for data subjects, specifications

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and derogations with regard to the information requirements and rights to rectification, to erasure, to be forgotten, to restriction of processing, to data portability, and to object when processing personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. The conditions and safeguards in question may entail specific procedures for data subjects to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with technical and organisational measures aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles. The processing of personal data for scientific purposes should also comply with other relevant legislation such as on clinical trials.

157) By coupling information from registries, researchers can obtain new knowledge of great value with regard to widespread medical conditions such as cardiovascular disease, cancer and depression. On the basis of registries, research results can be enhanced, as they draw on a larger population. Within social science, research on the basis of registries enables researchers to obtain essential knowledge about the long-term correlation of a number of social conditions such as unemployment and education with other life conditions. Research results obtained through registries provide solid, high-quality knowledge which can provide the basis for the formulation and implementation of knowledge-based policy, improve the quality of life for a number of people and improve the efficiency of social services. In order to facilitate scientific research, personal data can be processed for scientific research purposes, subject to appropriate conditions and safeguards set out in Union or Member State law.

158) Where personal data are processed for archiving purposes, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorised to provide for the further

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processing of personal data for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes, genocide, crimes against humanity, in particular the Holocaust, or war crimes.

159) Where personal data are processed for scientific research purposes, this Regulation should also apply to that processing. For the purposes of this Regulation, the processing of personal data for scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research. In addition, it should take into account the Union's objective under Article 179(1) TFEU of achieving a European Research Area. Scientific research purposes should also include studies conducted in the public interest in the area of public health. To meet the specificities of processing personal data for scientific research purposes, specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific research purposes. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of those measures.

160) Where personal data are processed for historical research purposes, this Regulation should also apply to that processing. This should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.

161) For the purpose of consenting to the participation in scientific research activities in clinical trials, the relevant provisions of Regulation (EU) No 536/2014 of the European Parliament and of the Council should apply.

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162) Where personal data are processed for statistical purposes, this Regulation should apply to that processing. Union or Member State law should, within the limits of this Regulation, determine statistical content, control of access, specifications for the processing of personal data for statistical purposes and appropriate measures to safeguard the rights and freedoms of the data subject and for ensuring statistical confidentiality. Statistical purposes mean any operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results. Those statistical results may further be used for different purposes, including a scientific research purpose. The statistical purpose implies that the result of processing for statistical purposes is not personal data, but aggregate data, and that this result or the personal data are not used in support of measures or decisions regarding any particular natural person.

163) The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in accordance with the statistical principles as set out in Article 338(2) TFEU, while national statistics should also comply with Member State law. Regulation (EC) No 223/2009 of the European Parliament and of the Council provides further specifications on statistical confidentiality for European statistics.

164) As regards the powers of the supervisory authorities to obtain from the controller or processor access to personal data and access to their premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy. This is without prejudice to existing Member State obligations to adopt rules on professional secrecy where required by Union law.

165) This Regulation respects and does not prejudice the status under existing constitutional law of churches and religious associations or communities in the Member States, as recognised in Article 17 TFEU.

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166) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 TFEU should be delegated

to the Commission. In particular, delegated acts should be adopted in respect of criteria and requirements for certification mechanisms, information to be presented by standardised icons and procedures for providing such icons. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

167) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission when provided for by this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. In that context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

168) The examination procedure should be used for the adoption of implementing acts on standard contractual clauses between controllers and processors and between processors; codes of conduct; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country, a territory or a specified sector within that third country, or an international organisation; standard protection clauses; formats and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules; mutual assistance; and arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board.

169) The Commission should adopt immediately applicable implementing acts where available evidence reveals that a third country, a territory or a specified sector within that third country, or an international organisation does not ensure an adequate level of protection, and imperative grounds of urgency so require.

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170) Since the objective of this Regulation, namely to ensure an equivalent level of protection of natural persons and the free flow of personal data throughout the Union, cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects

of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

171) Directive 95/46/EC should be repealed by this Regulation. Processing already under way on the date of application of this Regulation should be brought into conformity with this Regulation within the period of two years after which this Regulation enters into force. Where processing is based on consent pursuant to Directive 95/46/EC, it is not necessary for the data subject to give his or her consent again if the manner in which the consent has been given is in line with the conditions of this Regulation, so as to allow the controller to continue such processing after the date of application of this Regulation. Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC remain in force until amended, replaced or repealed.

172) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 7 March 2012.

173) This Regulation should apply to all matters concerning the protection of fundamental rights and freedoms vis-à-vis the processing of personal data which are not subject to specific obligations with the same objective set out in Directive 2002/58/EC of the European Parliament and of the Council, including the obligations on the controller and the rights of natural persons. In order to clarify the relationship between this Regulation and Directive 2002/58/EC, that Directive should be amended accordingly. Once this Regulation is adopted, Directive 2002/58/EC should be reviewed in particular in order to ensure consistency with this Regulation,

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GDPR ARTICLES

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 I GENERAL PROVISIONS

Article 1 Subject-matter and objectives

Recitals: 1-13

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects *fundamental rights and freedoms* of natural persons and in particular *their right to the protection of personal data*.
3. The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

The #gdpr is about the protection of fundamental rights, and in particular the right to the protection of personal data.

Article 2 Material scope

Recitals: 14-21, 27

1. This Regulation applies to the processing of personal data wholly or partly *by automated means and* to the processing *other than by automated means* of personal data which form part of a filing system or are intended to form part of a filing system.
2. This Regulation does not apply to the processing of personal data:
   a) in the course of an activity which falls outside the scope of Union law;
   b) by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the TEU;
   c) by a natural person in the course of a purely personal or household activity;
   d) by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
3. For the processing of personal data by the Union institutions, bodies, offices and agencies, Regulation (EC) No 45/2001 applies. Regulation (EC) No 45/2001 and other Union legal acts applicable to such processing of personal data shall be adapted to the principles and rules of this Regulation in accordance with Article 98.
4. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

The #gdpr applies to the (automated) processing of personal data. It doesn't apply to personal or household activities, or to criminal investigation.

Article 3 Territorial scope

Recitals: 22-25

1. This 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.
2. 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.
3. This 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.

The #gdpr applies to organisations that process personal data, even when not based in the EU, or if they process the data outside the EU.

Article 4 Definitions

Recitals: 14, 15, 26-37

For the purposes of this Regulation:

1) **'personal data'** means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

2) **'processing'** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

3) **'restriction of processing'** means the marking of stored personal data with the aim of limiting their processing in the future;
4) **'profiling'** means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;
5) **'pseudonymisation'** means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
6) **'filing system'** means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;
7) **'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; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
8) **'processor'** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
9) **'recipient'** means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;
10) **'third party'** means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data;
11) **'consent'** of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by

which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;
12) **'personal data breach'** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
13) **'genetic data'** means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;
14) **'biometric data'** means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
15) **'data concerning health'** means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;
16) **'main establishment'** means:
    a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;
    b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, or, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;
17) **'representative'** means a natural or legal person established in the Union who, designated by the controller or processor in writing pursuant to Article 27, represents the controller or processor with regard to their respective obligations under this Regulation;

18) **'enterprise'** means a natural or legal person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity;
19) **'group of undertakings'** means a controlling undertaking and its controlled undertakings;
20) **'binding corporate rules'** means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity;
21) **'supervisory authority'** means an independent public authority which is established by a Member State pursuant to Article 51;
22) **'supervisory authority concerned'** means a supervisory authority which is concerned by the processing of personal data because:
    a) the controller or processor is established on the territory of the Member State of that supervisory authority;
    b) data subjects residing in the Member State of that supervisory authority are substantially affected or likely to be substantially affected by the processing; or
    c) a complaint has been lodged with that supervisory authority;
23) **'cross-border processing'** means either:
    a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or
    b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.
24) **'relevant and reasoned objection'** means an objection to a draft decision as to whether there is an infringement of this Regulation, or whether envisaged action in relation to the controller or processor complies with this Regulation, which clearly demonstrates the significance of the risks posed by the draft decision as regards the fundamental rights and freedoms of data subjects and, where applicable, the free flow of personal data within the Union;
25) **'information society service'** means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council (19);

26) **'international organisation'** means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

The #gdpr includes 26 definitions e.g. personal data, processing. New definitions cover genetic data, biometric data, pseudonymisation.

CHAPTER II PRINCIPLES

Article 5 Principles relating to processing of personal data

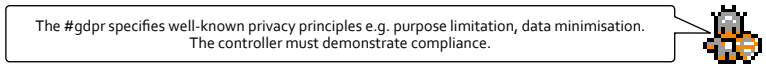
Recitals: 33, 39, 50

€0 - €20m or up to 4%

1. Personal data shall be:
    a) processed lawfully, fairly and in a transparent manner in relation to the data subject *('lawfulness, fairness and transparency'*);
    b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('*purpose limitation*');
    c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('*data minimisation*');
    d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('*accuracy*');
    e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('*storage limitation*');

f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('*integrity and confidentiality*').

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('*accountability*').



Article 6 Lawfulness of processing

Recitals: 8, 31, 40, 41, 44-50, 61

€0 - €20m or up to 4%

1. Processing shall be lawful only if and to the extent that at least one of the following applies:
   a) the data subject has given *consent* to the processing of his or her personal data for one or more specific purposes;
   b) processing is necessary for the *performance of a contract* to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
   c) processing is necessary for *compliance with a legal obligation* to which the controller is subject;
   d) processing is necessary in order to *protect the vital interests* of the data subject or of another natural person;
   e) processing is necessary for the performance of a task carried out in the *public interest* or in the exercise of *official authority* vested in the controller;
   f) processing is necessary for the *purposes of the legitimate interests* pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

   Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.
2. Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing for compliance with points (c) and (e) of paragraph 1 by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.
3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by:
   a) Union law; or
   b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX. The Union or the Member State law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is *compatible with the purpose* for which the personal data are initially collected, take into account, inter alia:
   a) any link between the purposes for which the personal data have been collected and *the purposes of the intended further processing*;
   b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;
   c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;
   d) the possible consequences of the intended further processing for data subjects;

e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

The #gdpr lists familiar grounds for processing personal data e.g. consent, legitimate interest. Legitimate interest no longer applies to governments.

Article 7 Conditions for consent

Recitals: 32, 33, 42, 43, 171

€0 - €20m or up to 4%

1. Where processing is based on consent, the controller shall be able to *demonstrate* that the data subject has consented to processing of his or her personal data.
2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is *clearly distinguishable* from the other matters, in an *intelligible and easily accessible form*, using *clear and plain language*. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.
3. The data subject shall have the *right to withdraw* his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw as to give consent.
4. When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is *conditional on consent* to the processing of personal data that is not necessary for the performance of that contract.

The controller must be able to prove consent has been freely given. Giving and withdrawing consent should be easy under the #gdpr.

Article 8 Conditions applicable to child's consent in relation to information society services

Recitals: 38, 58

€0 - €10m or up to 2%

1. Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is *at least 16 years old*. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is *given or authorised* by the holder of parental responsibility over the child. Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.
2. The controller shall make *reasonable efforts to verify* in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.
3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

A child's consent should be given or authorised by the parent. Controllers make reasonable verification efforts under the #gdpr.

Article 9 Processing of special categories of personal data

Recitals: 34, 51-56

€0 - €20m or up to 4%

1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data *for the purpose of uniquely identifying* a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
2. Paragraph 1 shall not apply if one of the following applies:
   a) the data subject has given *explicit consent* to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
   b) processing is necessary for the purposes of *carrying out the obligations and exercising specific rights* of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
   c) processing is necessary to protect the *vital interests* of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
   d) processing is carried out in the course of its *legitimate activities* with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates

solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

e) processing relates to personal data which are *manifestly made public* by the data subject;

f) processing is necessary for the establishment, exercise or defence of *legal claims* or whenever courts are acting in their judicial capacity;

g) processing is necessary for reasons of *substantial public interest*, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

h) processing is necessary for the purposes of *preventive or occupational medicine*, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;

i) processing is necessary for reasons of *public interest in the area of public health*, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;

j) processing is necessary for *archiving purposes in the public interest, scientific or historical research purposes or statistical purposes* in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.

4. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.

Processing of special categories of personal data e.g. ethnicity, health, is prohibited or subject to strict conditions under the #gdpr.

Article 10 Processing of personal data relating to criminal convictions and offences

Recitals: 19, 97

Processing of personal data relating to *criminal convictions and offences* or related *security measures* based on Article 6(1) shall be carried out only under the *control of official authority* or when the processing is authorised by Union or Member State law providing for *appropriate safeguards for the rights and freedoms* of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.

Records of criminal convictions and offences may be kept only by, or under the responsibility of, official authorities. #gdpr

Article 11 Processing which does not require identification

Recital: 57

€0 - €10m or up to 2%

1. If the purposes for which a controller processes personal data do not or do no longer require the identification of a data subject by the controller, the controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with this Regulation.

2. Where, in cases referred to in paragraph 1 of this Article, the controller is able to *demonstrate* that it is not in a position to identify the data subject, the controller shall *inform the data subject accordingly*, if possible. In such cases, Articles 15 to 20 shall not apply except where the data subject, for the purpose of exercising his or her rights under those articles, provides additional information enabling his or her identification.

If data is anonymised or pseudonymised, the controller can sometimes inform data subjects accordingly in response to a request. #gdpr

CHAPTER III RIGHTS OF THE DATA SUBJECT

SECTION 1 TRANSPARENCY AND MODALITIES

11-15

Article 12 Transparent information, communication and modalities for the exercise of the rights of the data subject

Recitals: 58, 59

€0 - €20m or up to 4%

1. The controller shall take *appropriate measures to provide any information* referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject *in a concise, transparent, intelligible and easily accessible form, using clear and plain language*, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.
2. The controller shall facilitate the exercise of data subject rights under Articles 15 to 22. In the cases referred to in Article 11(2), the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22, unless the controller demonstrates that it is not in a position to identify the data subject.
3. The controller shall *provide information on action taken* on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.
4. If the controller does not take action on the request of the data subject, the controller shall inform the data subject *without delay* and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.
5. Information provided under Articles 13 and 14 and any communication and any actions taken under Articles 15 to 22 and 34 shall be provided *free of charge*. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:
   a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or
   b) refuse to act on the request. The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.
6. Without prejudice to Article 11, where the controller has reasonable doubts concerning the identity of the natural person making the request referred to in Articles 15 to 21, the controller may request the provision of additional information necessary to confirm the identity of the data subject.
7. The information to be provided to data subjects pursuant to Articles 13 and 14 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 for the purpose of determining the information to be presented by the icons and the procedures for providing standardised icons.

Communication to data subjects should be concise, transparent and easy accessible, using clear and plain language. #gdpr

SECTION 2 INFORMATION AND ACCESS TO PERSONAL DATA

Article 13 Information to be provided where personal data are collected from the data subject

Recitals: 60-62

€0 - €20m or up to 4%

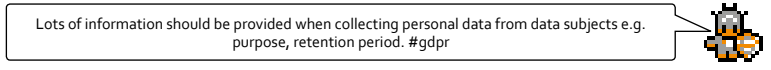
1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:
   a) the *identity and the contact details of the controller* and, where applicable, of the controller's representative;
   b) the *contact details of the data protection officer*, where applicable;

11-15

c) the *purposes of the processing* for which the personal data are intended as well as the legal basis for the processing;
d) where the processing is based on point (f) of Article 6(1), the *legitimate interests* pursued by the controller or by a third party;
e) the *recipients* or categories of recipients of the personal data, if any;
f) where applicable, the fact that the controller *intends to transfer personal data to a third country* or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:
   a) the *period for which the personal data will be stored*, or if that is not possible, the criteria used to determine that period;
   b) the existence of the right to request from the controller *access* to and *rectification* or *erasure* of personal data or *restriction of processing* concerning the data subject or to *object to processing* as well as the right to *data portability*;
   c) where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to *withdraw consent* at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
   d) the right to *lodge a complaint* with a supervisory authority;
   e) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and of the possible consequences of failure to provide such data;
   f) the existence of *automated decision-making*, including *profiling*, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
3. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected,

the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.
4. Paragraphs 1, 2 and 3 shall not apply where and insofar as the data subject already has the information.



Article 14 Information to be provided where personal data have not been obtained from the data subject

Recitals: 60-62

€0 - €20m or up to 4%

1. Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:
   a) the *identity and the contact details of the controller* and, where applicable, of the controller's representative;
   b) the *contact details of the data protection officer*, where applicable;
   c) the *purposes* of the processing for which the personal data are intended as well as the *legal basis* for the processing;
   d) the *categories of personal data* concerned;
   e) the *recipients* or categories of recipients of the personal data, if any;
   f) where applicable, that the controller *intends to transfer personal data to a recipient in a third country* or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available.
2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing in respect of the data subject:
   a) the *period* for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
   b) where the processing is based on point (f) of Article 6(1), the *legitimate interests* pursued by the controller or by a third party;
   c) the existence of the right to request from the controller *access* to and *rectification* or *erasure* of personal data or *restriction of proces-*

sing concerning the data subject and to *object to processing* as well as the right to *data portability*;

d) where processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to *withdraw consent* at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
e) the right to *lodge a complaint* with a supervisory authority;
f) from which *source* the personal data originate, and if applicable, whether it came from publicly accessible sources;
g) the existence of *automated decision-making*, including *profiling*, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

3. The controller shall provide the information referred to in paragraphs 1 and 2:
   a) within a *reasonable period* after obtaining the personal data, but at the latest *within one month*, having regard to the specific circumstances in which the personal data are processed;
   b) if the personal data are to be used for communication with the data subject, at the latest at the *time of the first communication* to that data subject; or
   c) if a disclosure to another recipient is envisaged, at the latest when the personal data are *first disclosed*.
4. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were obtained, the controller shall provide the data subject *prior to that further processing* with information on that other purpose and with any relevant further information as referred to in paragraph 2.
5. Paragraphs 1 to 4 shall not apply where and insofar as:
   a) the data subject already has the information;
   b) the provision of such information proves *impossible* or would involve a *disproportionate effort*, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take *appropriate measures* to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available;
   c) obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests; or
   d) where the personal data must remain *confidential* subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.

If data isn't obtained directly from data subjects, lots of information should still be provided to them. #gdpr

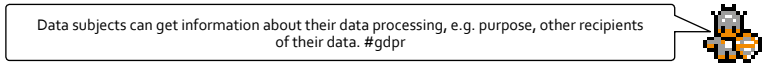
Article 15 Right of access by the data subject

Recitals: 63, 64

€0 - €20m or up to 4%

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:
   a) the *purposes* of the processing;
   b) the *categories of personal data* concerned;
   c) the *recipients* or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in *third countries* or international organisations;
   d) where possible, the envisaged *period* for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
   e) the existence of the right to request from the controller *rectification* or *erasure* of personal data or *restriction* of processing of personal data concerning the data subject or to *object* to such processing;
   f) the right to *lodge a complaint* with a supervisory authority;
   g) where the personal data are *not collected from the data subject*, any available information as to their source;
   h) the existence of *automated decision-making*, including *profiling*, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

2. Where personal data are transferred to a *third country* or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.
3. The controller shall provide a *copy* of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.



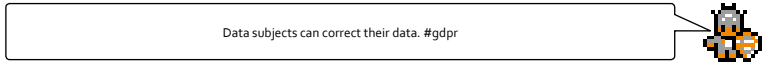
SECTION 3 RECTIFICATION AND ERASURE

Article 16 Right to rectification

Recital: 59

€0 - €20m or up to 4%

The data subject shall have the right to obtain from the controller without undue delay the *rectification* of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.



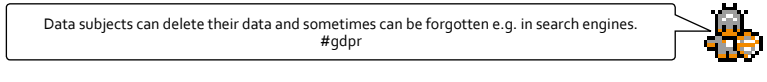
Article 17 Right to erasure ('right to be forgotten')

Recital: 65

€0 - €20m or up to 4%

1. The data subject shall have the right to obtain from the controller the *erasure* of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:
   a) the personal data are *no longer necessary* in relation to the purposes for which they were collected or otherwise processed;

   b) the data subject *withdraws consent* on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
   c) the data subject *objects* to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
   d) the personal data have been *unlawfully* processed;
   e) the personal data have to be erased for *compliance with a legal obligation* in Union or Member State law to which the controller is subject;
   f) the personal data have been collected in relation to *the offer of information society services* referred to in Article 8(1).
2. Where the controller has made the personal data *public* and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take *reasonable steps*, including technical measures, *to inform controllers* which are processing the personal data that the data subject *has requested the erasure* by such controllers of any links to, or copy or replication of, those personal data.
3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:
   a) for exercising the right of *freedom of expression* and information;
   b) for *compliance with a legal obligation* which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
   c) for reasons of *public interest* in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
   d) for *archiving purposes* in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
   e) for the establishment, exercise or defence of *legal claims*.



Article 18 Right to restriction of processing

Recital: 67

€0 - €20m or up to 4%

1. The data subject shall have the right to obtain from the controller *restriction* of processing where one of the following applies:
   a) the *accuracy* of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy of the personal data;
   b) the processing is *unlawful* and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
   c) the controller *no longer needs* the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;
   d) the data subject has *objected* to processing pursuant to Article 21(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.
2. Where processing has been restricted under paragraph 1, such personal data shall, with the exception of storage, only be processed with the data subject's *consent* or for the establishment, exercise or defence of *legal claims* or for the *protection* of the rights of another natural or legal person or for reasons of important *public interest* of the Union or of a Member State.
3. A data subject who has obtained restriction of processing pursuant to paragraph 1 shall be *informed* by the controller before the restriction of processing is lifted.

Data subjects can sometimes (temporarily) restrict the processing of their data. #gdpr

Article 19 Notification obligation regarding rectification or erasure of personal data or restriction of processing

Recital: 66

€0 - €20m or up to 4%

The controller *shall communicate* any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17(1) and Article 18 *to each recipient* to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

If a data subject requests a correction or deletion, the controller will inform the other data recipients. #gdpr

Article 20 Right to data portability

Recital: 68

€0 - €20m or up to 4%

1. The data subject shall have the right to *receive* the personal data concerning him or her, which he or she has provided to a controller, in a *structured*, *commonly used* and *machine-readable format* and have the right to *transmit* those data to another controller without hindrance from the controller to which the personal data have been provided, where:
   a) the processing is based on *consent* pursuant to point (a) of Article 6(1) or point (a) of Article 9(2) or on a *contract* pursuant to point (b) of Article 6(1); and
   b) the processing is carried out by *automated means*.
2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted *directly* from one controller to another, where technically feasible.
3. The exercise of the right referred to in paragraph 1 of this Article shall be *without prejudice to Article 17*. That right shall not apply to processing necessary for the performance of a task carried out in the *public interest* or in the exercise of *official authority* vested in the controller.
4. The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.

Data subjects can transfer their data (data portability) if their data is processed automatically based on consent or a contract. #gdpr

SECTION 4 RIGHT TO OBJECT AND AUTOMATED INDIVIDUAL DECISION-MAKING

Article 21 Right to object

Recitals: 69, 70, 73

€0 - €20m or up to 4%

1. The data subject shall have the right to *object*, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of Article 6(1), including profiling based on those provisions. The controller shall no longer process the personal data unless the controller demonstrates *compelling*

legitimate grounds for the processing which *override* the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.

2. Where personal data are processed for *direct marketing* purposes, the data subject shall have the right to object *at any time* to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.
3. Where the data subject objects to processing for direct marketing purposes, the personal data shall *no longer* be processed for such purposes.
4. At the latest at the time of the first communication with the data subject, the right referred to in paragraphs 1 and 2 shall be *explicitly brought to the attention* of the data subject and shall be presented clearly and separately from any other information.
5. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the data subject may exercise his or her right to object by *automated means* using technical specifications.
6. Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to Article 89(1), the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is *necessary* for the performance of a task carried out for reasons of *public interest*.

21-25

Data subjects can object to the processing of their data, e.g. for direct marketing. #gdpr

Article 22 Automated individual decision-making, including profiling

Recitals: 71, 72

€0 - €20m or up to 4%

1. The data subject shall have the right *not to be subject* to a decision based *solely on automated processing*, including profiling, which produces *legal effects* concerning him or her or similarly significantly affects him or her.
2. Paragraph 1 shall not apply if the decision:
   a) is necessary for entering into, or performance of, a *contract* between the data subject and a data controller;
   b) is *authorised* by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
   c) is based on the data subject's *explicit consent*.
3. In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement *suitable measures* to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain *human intervention* on the part of the controller, to *express* his or her point of view and to *contest* the decision.
4. Decisions referred to in paragraph 2 shall *not be based on special categories* of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and *suitable measures* to safeguard the data subject's rights and freedoms and legitimate interests are in place.

21-25

Automated decision-making and profiling is only permitted under specific #gdpr conditions.

SECTION 5 RESTRICTIONS

Article 23 Restrictions

Recital: 73

1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the *essence* of the fundamental rights and freedoms and is a *necessary* and *proportionate* measure in a democratic society to safeguard:
   a) national security;
   b) defence;
   c) public security;
   d) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
   e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation a matters, public health and social security;
   f) the protection of judicial independence and judicial proceedings;

g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
h) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (e) and (g);
i) the protection of the data subject or the rights and freedoms of others;
j) the enforcement of civil law claims.

2. In particular, any legislative measure referred to in paragraph 1 shall contain *specific provisions* at least, where relevant, as to:
a) the purposes of the processing or categories of processing;
b) the categories of personal data;
c) the scope of the restrictions introduced;
d) the safeguards to prevent abuse or unlawful access or transfer;
e) the specification of the controller or categories of controllers;
f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
g) the risks to the rights and freedoms of data subjects; and
h) the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.

21-25

The EU or a Member State may limit the #gdpr privacy rules for security reasons provided this measure is proportionate and respects fundamental rights.

CHAPTER IV CONTROLLER AND PROCESSOR

SECTION 1 GENERAL OBLIGATIONS

Article 24 Responsibility of the controller

Recitals: 74-77

1. Taking into account the *nature*, *scope*, *context* and *purposes* of processing as well as the *risks* of varying likelihood and severity for the rights and freedoms of natural persons, the controller shall implement *appropriate technical and organisational measures* to *ensure* and to be able to *demonstrate* that processing is performed in accordance with this Regulation. Those measures shall be reviewed and updated where necessary.

2. Where proportionate in relation to processing activities, the measures referred to in paragraph 1 shall include the implementation of *appropriate data protection policies* by the controller.
3. Adherence to approved *codes of conduct* as referred to in Article 40 or approved *certification* mechanisms as referred to in Article 42 may be used as an element by which to demonstrate compliance with the obligations of the controller.

The controller must take appropriate measures to comply with the #gdpr and demonstrate compliance e.g. by implementing a privacy policy.

21-25

Article 25 Data protection by design and by default

Recital: 78

€0 - €10m or up to 2%

1. Taking into account the *state of the art*, the *cost* of implementation and the *nature*, *scope*, *context* and *purposes* of processing as well as the *risks* of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, *both* at the time of the *determination* of the means for processing and *at the time of the processing itself*, *implement* appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.
2. The controller shall implement appropriate technical and organisational measures for ensuring that, *by default*, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons.
3. An approved certification mechanism pursuant to Article 42 may be used as an element to demonstrate compliance with the requirements set out in paragraphs 1 and 2 of this Article.

Privacy must be considered in the design of systems and services (privacy by default/design). #gdpr

Article 26 Joint controllers

Recital: 79

€0 - €10m or up to 2%

1. Where two or more controllers *jointly* determine the purposes and means of processing, they shall be joint controllers. They shall in a *transparent manner* determine their *respective responsibilities* for compliance with the obligations under this Regulation, in particular as regards the *exercising* of the rights of the data subject and their *respective duties* to provide the information referred to in Articles 13 and 14, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall *duly reflect* the *respective roles* and relationships of the joint controllers vis-à-vis the data subjects. The *essence* of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against *each* of the controllers.

Under the #gdpr, controllers can share responsibility. They must define responsibilities in a transparent way.

Article 27 Representatives of controllers or processors not established in the Union

Recital: 80

€0 - €10m or up to 2%

1. Where Article 3(2) applies, the controller or the processor shall *designate* in writing a *representative* in the Union.
2. The obligation laid down in paragraph 1 of this Article shall not apply to:
   a) processing which 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 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; or
   b) a public authority or body.

3. 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.
4. The representative shall be *mandated* by the controller or processor to be addressed in addition to or instead of the controller or the processor by, in particular, supervisory authorities and data subjects, on all issues related to processing, for the purposes of ensuring compliance with this Regulation.
5. The designation of a representative by the controller or processor shall be *without prejudice* to legal actions which could be initiated against the controller or the processor themselves.

26-30

If an organisation performs activities in the EU without being based in the EU, it must appoint a representative in the EU. #gdpr

Article 28 Processor

Recital: 81

€0 - €10m or up to 2%

1. Where processing is to be carried out on behalf of a controller, the controller shall use *only* processors providing *sufficient* guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and *ensure* the protection of the rights of the data subject.
2. The processor *shall not engage* another processor *without* prior specific or general written *authorisation* of the controller. In the case of general written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the *opportunity to object* to such changes.
3. Processing by a processor 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 *sets out* the *subject-matter* and *duration* of the processing, the *nature* and *purpose* of the processing, the *type* of personal data and *categories* of data subjects and the *obligations* and *rights* of the controller. That contract or other legal act shall stipulate, *in particular*, that the processor:
   a) processes the personal data only on *documented instructions* from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required

to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

b) ensures that persons authorised to process the personal data have committed themselves to *confidentiality* or are under an appropriate statutory obligation of confidentiality;
c) takes all measures required pursuant to Article 32;
d) respects the conditions referred to in paragraphs 2 and 4 for engaging another processor;
e) taking into account the nature of the processing, *assists* the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;
f) assists the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 taking into account the nature of processing and the information available to the processor;
g) at the choice of the controller, *deletes or returns* all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data;
h) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

With regard to point (h) of the first subparagraph, 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.

4. Where a processor engages another processor for carrying out specific processing activities on behalf of the controller, the *same* data protection obligations as set out in the contract or other legal act between the controller and the processor as referred to in paragraph 3 shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such manner that the processing will meet the requirements of this Regulation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.
5. Adherence of a processor to an approved *code of conduct* as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate sufficient guarantees as referred to in paragraphs 1 and 4 of this Article.
6. Without prejudice to an individual contract between the controller and the processor, the contract or the other legal act referred to in paragraphs 3 and 4 of this Article may be based, in whole or in part, on standard contractual clauses referred to in paragraphs 7 and 8 of this Article, including when they are part of a certification granted to the controller or processor pursuant to Articles 42 and 43.
7. The Commission may lay down standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the examination procedure referred to in Article 93(2).
8. A supervisory authority may adopt standard contractual clauses for the matters referred to in paragraph 3 and 4 of this Article and in accordance with the consistency mechanism referred to in Article 63.
9. The contract or the other legal act referred to in paragraphs 3 and 4 shall be *in writing*, including in electronic form.
10. Without prejudice to Articles 82, 83 and 84, if a processor infringes this Regulation by determining the purposes and means of processing, the processor shall be considered to be a controller in respect of that processing.

The processor must meet #gdpr requirements. A data-processing agreement must be in place.

Article 29 Processing under the authority of the controller or processor

No recitals

€0 - €10m or up to 2%

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.

A person under the authority of a controller may only processes data as instructed by the controller, unless otherwise required by law. #gdpr

Article 30 Records of processing activities

Recitals: 13, 82

€0 - €10m or up to 2%

1. Each controller and, where applicable, the controller's representative, shall maintain a *record of processing activities* under its responsibility. That record shall contain all of the following information:
   a) the name and contact details of the controller and, where applicable, the joint controller, the controller's representative and the data protection officer;
   b) the purposes of the processing;
   c) a description of the categories of data subjects and of the categories of personal data;
   d) the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations;
   e) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
   f) where possible, the envisaged time limits for erasure of the different categories of data;
   g) where possible, a general description of the technical and organisational security measures referred to in Article 32(1).
2. Each processor and, where applicable, the processor's representative shall maintain a record of all categories of processing activities carried out on behalf of a controller, containing:
   a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting, and, where applicable, of the controller's or the processor's representative, and the data protection officer;
   b) the categories of processing carried out on behalf of each controller;
   c) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;
   d) where possible, a general description of the technical and organisational security measures referred to in Article 32(1).

26-30

3. The records referred to in paragraphs 1 and 2 shall be *in writing*, including in electronic form.
4. The controller or the processor and, where applicable, the controller's or the processor's representative, shall make the record available to the supervisory authority on request.
5. The obligations referred to in paragraphs 1 and 2 shall not apply to an enterprise or an organisation employing fewer than 250 persons *unless* the processing it carries out is *likely to result in a risk* to the rights and freedoms of data subjects, the processing is *not occasional*, or the processing *includes special categories of data* as referred to in Article 9(1) or personal data relating to criminal convictions and offences referred to in Article 10.

Organisations must maintain a record of their processing activities. Some small organisations are exempted. #gdpr

31-35

Article 31 Cooperation with the supervisory authority

Recital: 82

€0 - €10m or up to 2%

The controller and the processor and, where applicable, their representatives, shall *cooperate*, on request, with the supervisory authority in the performance of its tasks.

Organisations must cooperate with the authority when requested. #gdpr

SECTION 2 SECURITY OF PERSONAL DATA

Article 32 Security of processing

Recital: 83

€0 - €10m or up to 2%

1. Taking into account the *state of the art*, the *costs* of implementation and the *nature*, *scope*, *context* and *purposes* of processing as well as the *risk* of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement *appropriate technical and organisational measures* to ensure a level of *security* appropriate to the risk, including inter alia as appropriate:
   a) the pseudonymisation and encryption of personal data;
   b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
   c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;

d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

2. In assessing the *appropriate level of security* account shall be taken in particular of the *risks* that are presented by processing, in particular from accidental or unlawful *destruction*, *loss*, *alteration*, unauthorised *disclosure* of, or *access* to personal data transmitted, stored or otherwise processed.
3. Adherence to an approved *code of conduct* as referred to in Article 40 or an approved certification mechanism as referred to in Article 42 may be used as an element by which to demonstrate compliance with the requirements set out in paragraph 1 of this Article.
4. The controller and processor shall take steps to ensure that any natural person acting under the authority of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union or Member State law.

31-35

Organisations implement appropriate technical and organisational measures to protect personal data e.g. encryption. #gdpr

Article 33 Notification of a personal data breach to the supervisory authority

Recitals: 85, 87, 88

€0 - €10m or up to 2%

1. In the case of a personal data *breach*, the controller shall *without undue delay* and, where feasible, *not later than 72 hours* after having become aware of it, *notify* the personal data breach to the *supervisory authority* competent in accordance with Article 55, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the supervisory authority is not made within 72 hours, it shall be *accompanied by reasons for the delay*.
2. The processor shall *notify* the controller without undue delay after becoming aware of a personal data breach.
3. The notification referred to in paragraph 1 shall at least:
   a) describe the *nature* of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;

   b) communicate the *name* and contact details of the *data protection officer* or other contact point where more information can be obtained;
   c) describe the likely *consequences* of the personal data breach;
   d) describe the *measures* taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
4. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in *phases* without undue further delay.
5. The controller shall *document* any personal data breaches, comprising the *facts* relating to the personal data breach, its *effects* and the *remedial action taken*. That documentation shall enable the supervisory authority to *verify* compliance with this Article.

31-35

Organisations should report any data breach to the authority immediately (within 72 hours) and should document the breach. #gdprA

Article 34 Communication of a personal data breach to the data subject

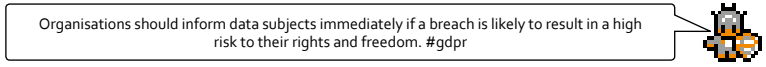
Recitals: 86-88

€0 - €10m or up to 2%

1. When the personal data breach is *likely* to result in a high risk to the rights and freedoms of natural persons, the controller shall *communicate* the personal data breach to the data subject without undue delay.
2. The communication to the data subject referred to in paragraph 1 of this Article shall describe in clear and plain language the nature of the personal data breach and contain at least the information and measures referred to in points (b), (c) and (d) of Article 33(3).
3. The communication to the data subject referred to in paragraph 1 shall not be required if any of the following conditions are met:
   a) the controller has *implemented* appropriate technical and organisational protection *measures*, and those measures were applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
   b) the controller has taken *subsequent measures* which ensure that the high risk to the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise;

c) it would involve *disproportionate effort*. In such a case, there shall instead be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.

4. If the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likelihood of the personal data breach resulting in a high risk, may *require it* to do so or may decide that any of the conditions referred to in paragraph 3 are met.



31-35

SECTION 3 DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION

Article 35 Data protection impact assessment

Recitals: 84, 89-93

€0 - €10m or up to 2%

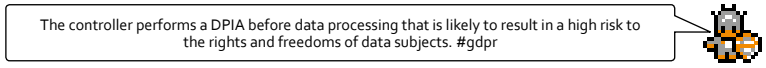
1. Where a type of processing in particular using *new technologies*, and taking into account the *nature*, *scope*, *context* and *purposes* of the processing, is likely to result in a *high risk* to the rights and freedoms of natural persons, the controller shall, *prior* to the processing, carry out an *assessment* of the *impact* of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.
2. The controller shall seek the advice of the data protection officer, where designated, when carrying out a data protection impact assessment.
3. A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:
   a) a *systematic* and *extensive evaluation* of personal aspects relating to natural persons which is based on *automated processing*, including *profiling*, and on which decisions are based that produce *legal effects* concerning the natural person or similarly significantly affect the natural person;
   b) processing on a *large scale of special categories* of data referred to in Article 9(1), or of personal data relating to *criminal convictions* and offences referred to in Article 10; or
   c) a *systematic monitoring* of a *publicly accessible area* on a *large scale.*

4. The supervisory authority shall establish and make public a *list* of the kind of processing operations which *are subject* to the requirement for a data protection impact assessment pursuant to paragraph 1.The supervisory authority shall communicate those lists to the Board referred to in Article 68.
5. The supervisory authority may also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required. The supervisory authority shall communicate those lists to the Board.
6. Prior to the adoption of the lists referred to in paragraphs 4 and 5, the competent supervisory authority shall apply the consistency mechanism referred to in Article 63 where such lists involve processing activities which are related to the *offering of goods or services* to data subjects or to the *monitoring* of their behaviour in several Member States, or may substantially affect the *free movement* of personal data within the Union.
7. The assessment shall contain at least:
   a) a *systematic description* of the envisaged processing operations and the *purposes* of the processing, including, where applicable, the *legitimate interest* pursued by the controller;
   b) an assessment of the *necessity* and *proportionality* of the processing operations in relation to the purposes;
   c) an assessment of the *risks* to the rights and freedoms of data subjects referred to in paragraph 1; and
   d) the *measures* envisaged to address the risks, including *safeguards*, *security measures* and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.
8. Compliance with approved *codes of conduct* referred to in Article 40 by the relevant controllers or processors shall be taken into due account in assessing the impact of the processing operations performed by such controllers or processors, in particular for the purposes of a data protection impact assessment.
9. Where appropriate, the controller shall seek the *views of data subjects* or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.
10. Where processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law or in the law of the Member State to which the con-

31-35

troller is subject, that law regulates the specific processing operation or set of operations in question, and a data protection impact assessment has *already* been carried out as part of a general impact assessment in the context of the adoption of that legal basis, paragraphs 1 to 7 shall not apply unless Member States deem it to be necessary to carry out such an assessment prior to processing activities.

11. Where necessary, the controller shall carry out a *review* to assess if processing is performed in accordance with the data protection impact assessment at least when there is a change of the risk represented by processing operations.



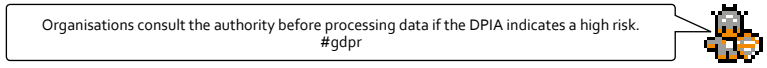
Article 36 Prior consultation

Recitals: 94-96

€0 - €10m or up to 2%

1. The controller shall *consult* the supervisory authority *prior* to processing where a data protection impact assessment under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.
2. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 1 would infringe this Regulation, in particular where the controller has insufficiently identified or mitigated the risk, the supervisory authority shall, within period of up to eight weeks of receipt of the request for consultation, provide *written advice* to the controller and, where applicable to the processor, and may use any of its powers referred to in Article 58. That period may be extended by six weeks, taking into account the complexity of the intended processing. The supervisory authority shall inform the controller and, where applicable, the processor, of any such extension within one month of receipt of the request for consultation together with the reasons for the delay. Those periods may be suspended until the supervisory authority has obtained information it has requested for the purposes of the consultation.
3. When consulting the supervisory authority pursuant to paragraph 1, the controller shall provide the supervisory authority with:
   a) where applicable, the *respective responsibilities* of the controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;

   b) the *purposes* and *means* of the intended processing;
   c) the *measures* and *safeguards* provided to protect the rights and freedoms of data subjects pursuant to this Regulation;
   d) where applicable, the *contact details* of the data protection officer;
   e) the *data protection impact assessment* provided for in Article 35; and
   f) any *other information* requested by the supervisory authority.
4. Member States shall *consult* the supervisory authority during the preparation of a *proposal for a legislative measure* to be adopted by a national parliament, or of a regulatory measure based on such a legislative measure, which relates to processing.
5. Notwithstanding paragraph 1, Member State law *may require* controllers to consult with, and obtain *prior authorisation* from, the supervisory authority in relation to processing by a controller for the performance of a task carried out by the controller in the public interest, including processing in relation to social protection and public health.



SECTION 4 DATA PROTECTION OFFICER

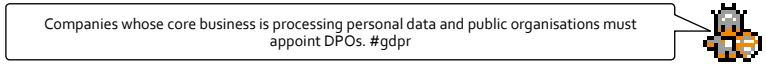
Article 37 Designation of the data protection officer

Recital: 97

€0 - €10m or up to 2%

1. The controller and the processor shall *designate* a *data protection officer* in any case where:
   a) the processing is carried out by a *public authority* or body, except for courts acting in their judicial capacity;
   b) the *core activities* of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require *regular and systematic monitoring* of data subjects on a *large scale*; or
   c) the *core activities* of the controller or the processor consist of processing on a *large scale* of *special categories of data* pursuant to Article 9 and personal *data relating to criminal convictions* and offences referred to in Article 10.

2. A group of undertakings may appoint a *single* data protection officer provided that a data protection officer is *easily accessible* from each establishment.
3. Where the controller or the processor is a public authority or body, a single data protection officer may be designated for *several* such authorities or bodies, taking account of their organisational structure and size.
4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies *representing categories* of controllers or processors *may* or, where required by Union or Member State law shall, designate a data protection officer. The data protection officer may act for such associations and other bodies representing controllers or processors.
5. The data protection officer shall be designated on the basis of *professional qualities* and, in particular, *expert knowledge* of data protection law and practices and the *ability* to fulfil the tasks referred to in Article 39.
6. The data protection officer may be a staff member of the controller or processor, or fulfil the tasks on the basis of a service contract.
7. The controller or the processor shall publish the contact details of the data protection officer and communicate them to the supervisory authority.

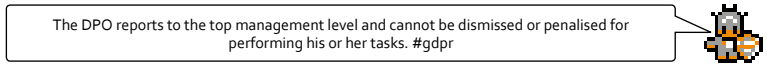


Article 38 Position of the data protection officer

Recital: 97

€0 - €10m or up to 2%

1. The controller and the processor shall ensure that the data protection officer is *involved*, properly and in a timely manner, in all issues which relate to the protection of personal data.
2. The controller and processor shall support the data protection officer in performing the tasks referred to in Article 39 by *providing resources* necessary to carry out those tasks and *access* to personal data and processing operations, and to *maintain* his or her expert knowledge.
3. The controller and processor shall ensure that the data protection officer does *not receive any instructions* regarding the exercise of those tasks. He or she shall *not be dismissed or penalised* by the controller or the processor for performing his tasks. The data protection officer shall *directly report* to the *highest* management level of the controller or the processor.
4. Data subjects may contact the data protection officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation.
5. The data protection officer shall be bound by *secrecy* or confidentiality concerning the performance of his or her tasks, in accordance with Union or Member State law.
6. The data protection officer may fulfil other tasks and duties. The controller or processor shall ensure that any such tasks and duties do not result in a *conflict of interests*.



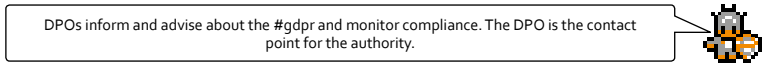
Article 39 Tasks of the data protection officer

Recital: 97

€0 - €10m or up to 2%

1. The data protection officer shall have at least the following tasks:
   a) to *inform* and *advise* the controller or the processor and the employees who carry out processing of their obligations pursuant to this Regulation and to other Union or Member State data protection provisions;
   b) to *monitor compliance* with this Regulation, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the *assignment of responsibilities*, *awareness-raising* and *training* of staff involved in processing operations, and the related audits;
   c) to provide *advice* where requested as regards the *data protection impact assessment* and monitor its performance pursuant to Article 35;
   d) to *cooperate* with the supervisory authority;
   e) to act as the *contact point* for the supervisory authority on issues relating to processing, including the prior consultation referred to in Article 36, and to consult, where appropriate, with regard to any other matter.
2. The data protection officer shall in the performance of his or her tasks have *due regard* to the *risk* associated with processing operations,

taking into account the nature, scope, context and purposes of processing.



SECTION 5 CODES OF CONDUCT AND CERTIFICATION

Article 40 Codes of conduct

Recitals: 98, 99

1. The Member States, the supervisory authorities, the Board and the Commission shall encourage the drawing up of *codes of conduct* intended to contribute to the proper application of this Regulation, taking account of the specific features of the various processing sectors and the specific needs of micro, small and medium-sized enterprises.
2. Associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or amend or extend such codes, for the purpose of specifying the application of this Regulation, such as with regard to:
   a) *fair* and *transparent* processing;
   b) the *legitimate interests* pursued by controllers in specific contexts;
   c) the *collection* of personal data;
   d) the *pseudonymisation* of personal data;
   e) the *information provided* to the public and to data subjects;
   f) the exercise of the *rights of data subjects*;
   g) the *information provided* to, and the protection of, *children*, and the manner in which the *consent* of the holders of *parental responsibility* over children is to be obtained;
   h) the *measures and procedures* referred to in Articles 24 and 25 and the measures to ensure security of processing referred to in Article 32;
   i) the *notification* of personal data *breaches* to supervisory authorities and the *communication* of such personal data breaches to data subjects;
   j) the *transfer* of personal data to *third countries* or international organisations; or
   k) out-of-court proceedings and other *dispute resolution* procedures for resolving disputes between controllers and data subjects with regard to processing, without prejudice to the rights of data subjects pursuant to Articles 77 and 79.
3. In addition to adherence by controllers or processors subject to this Regulation, codes of conduct approved pursuant to paragraph 5 of this Article and having general validity pursuant to paragraph 9 of this Article *may also* be adhered to by controllers or processors that are not subject to this Regulation pursuant to Article 3 in order to provide appropriate safeguards within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (e) of Article 46(2). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards including with regard to the rights of data subjects.
4. A code of conduct referred to in paragraph 2 of this Article shall contain *mechanisms* which enable the body referred to in Article 41(1) to carry out the mandatory monitoring of compliance with its provisions by the controllers or processors which undertake to apply it, without prejudice to the tasks and powers of supervisory authorities competent pursuant to Article 55 or 56.
5. Associations and other bodies referred to in paragraph 2 of this Article which intend to prepare a code of conduct or to amend or extend an existing code shall *submit the draft* code, amendment or extension to the supervisory authority which is competent pursuant to Article 55. The supervisory authority shall provide an *opinion* on whether the draft code, amendment or extension complies with this Regulation and shall approve that draft code, amendment or extension if it finds that it provides sufficient appropriate safeguards.
6. Where the draft code, or amendment or extension is approved in accordance with paragraph 5, and where the code of conduct concerned does not relate to processing activities in several Member States, the supervisory authority shall register and publish the code.
7. Where a draft code of conduct relates to processing activities in several Member States, the supervisory authority which is competent pursuant to Article 55 shall, before approving the draft code, amendment or extension, submit it in the procedure referred to in Article 63 to the Board which shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation or, in the situation referred to in paragraph 3 of this Article, provides appropriate safeguards.

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8. Where the opinion referred to in paragraph 7 confirms that the draft code, amendment or extension complies with this Regulation, or, in the situation referred to in paragraph 3, provides appropriate safeguards, the Board shall submit its opinion to the Commission.
9. The Commission may, by way of implementing acts, decide that the approved code of conduct, amendment or extension submitted to it pursuant to paragraph 8 of this Article have *general validity* within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 93(2).
10. The Commission shall ensure appropriate publicity for the approved codes which have been decided as having general validity in accordance with paragraph 9.
11. The Board shall collate all approved codes of conduct, amendments and extensions in a register and shall make them publicly available by way of appropriate means.

Associations and other bodies may draw up codes of conduct. The authority evaluates codes and publishes approved ones. #gdpr

Article 41 Monitoring of approved codes of conduct

No recitals

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, the *monitoring* of compliance with a code of conduct pursuant to Article 40 may be carried out by a body which has an appropriate level of expertise in relation to the subject-matter of the code and is *accredited* for that purpose by the competent supervisory authority.
2. A body as referred to in paragraph 1 may be *accredited to monitor* compliance with a code of conduct where that body has:
   a) demonstrated its *independence* and *expertise* in relation to the subject-matter of the code to the satisfaction of the competent supervisory authority;
   b) established procedures which allow it to assess the *eligibility* of controllers and processors concerned to apply the code, to *monitor* their compliance with its provisions and to *periodically review* its operation;
   c) *established procedures and structures* to handle *complaints* about infringements of the code or the manner in which the code has been, or is being, implemented by a controller or processor, and

   to make those procedures and structures transparent to data subjects and the public; and
   d) demonstrated to the satisfaction of the competent supervisory authority that its tasks and duties do *not result in a conflict of interests*.
3. The competent supervisory authority shall submit the *draft criteria* for accreditation of a body as referred to in paragraph 1 of this Article to the Board pursuant to the consistency mechanism referred to in Article 63.
4. Without prejudice to the tasks and powers of the competent supervisory authority and the provisions of Chapter VIII, a body as referred to in paragraph 1 of this Article shall, subject to appropriate safeguards, take appropriate action in cases of infringement of the code by a controller or processor, including *suspension* or *exclusion* of the controller or processor concerned from the code. It shall inform the competent supervisory authority of such actions and the reasons for taking them.

€0 - €10m or up to 2%

5. The competent supervisory authority shall *revoke* the accreditation of a body as referred to in paragraph 1 if the conditions for accreditation are not, or are no longer, met or where actions taken by the body infringe this Regulation.
6. This Article shall not apply to processing carried out by public authorities and bodies.

Accredited organisations can monitor compliance with codes of conduct. #gdpr

Article 42 Certification

Recital: 100

€0 - €10m or up to 2%

1. The Member States, the supervisory authorities, the Board and the Commission shall encourage, in particular at Union level, the establishment of data protection *certification mechanisms* and of data protection *seals* and *marks*, for the purpose of demonstrating compliance with this Regulation of processing operations by controllers and processors. The specific needs of micro, small and medium-sized enterprises shall be taken into account.
2. In addition to adherence by controllers or processors subject to this Regulation, data protection certification mechanisms, seals or marks approved pursuant to paragraph 5 of this Article may be established

for the purpose of demonstrating the existence of appropriate safeguards provided by controllers or processors that are not subject to this Regulation pursuant to Article 3 within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (f) of Article 46(2). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards, including with regard to the rights of data subjects.

3. The certification shall be *voluntary* and available via a process that is transparent.
4. A certification pursuant to this Article does not reduce the responsibility of the controller or the processor for compliance with this Regulation and is without prejudice to the tasks and powers of the supervisory authorities which are competent pursuant to Article 55 or 56.
5. A certification pursuant to this Article shall be issued by the certification bodies referred to in Article 43 or by the competent supervisory authority, on the basis of criteria approved by that competent supervisory authority pursuant to Article 58(3) or by the Board pursuant to Article 63. Where the criteria are approved by the Board, this may result in a *common certification*, the *European Data Protection Seal*.
6. The controller or processor which submits its processing to the certification mechanism shall provide the certification body referred to in Article 43, or where applicable, the competent supervisory authority, with all information and access to its processing activities which are necessary to conduct the certification procedure.
7. Certification shall be issued to a controller or processor for a maximum period of three years and may be renewed, under the same conditions, provided that the relevant requirements continue to be met. Certification shall be withdrawn, as applicable, by the certification bodies referred to in Article 43 or by the competent supervisory authority where the requirements for the certification are not or are no longer met.
8. The Board shall collate all certification mechanisms and data protection seals and marks in a register and shall make them publicly available by any appropriate means.

41-45

Organisations can get certified to demonstrate their #gdpr compliance. There will be a European register of existing seals and certifications.

Article 43 Certification bodies

Recital: 100

€0 - €10m or up to 2%

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, *certification bodies* which have an appropriate level of expertise in relation to data protection shall, after informing the supervisory authority in order to allow it to exercise its powers pursuant to point (h) of Article 58(2) where necessary, *issue* and *renew* certification. Member States shall ensure that those certification bodies are accredited by one or both of the following:
   a) the supervisory authority which is competent pursuant to Article 55 or 56;
   b) the *national accreditation body* named in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council (20) in accordance with EN-ISO/IEC 17065/2012 and with the additional requirements established by the supervisory authority which is competent pursuant to Article 55 or 56.
2. Certification bodies referred to in paragraph 1 shall be accredited in accordance with that paragraph only where they have:
   a) demonstrated their *independence* and *expertise* in relation to the subject-matter of the certification to the satisfaction of the competent supervisory authority;
   b) undertaken to respect the criteria referred to in Article 42(5) and approved by the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63;
   c) established procedures for the *issuing*, *periodic review* and *withdrawal* of data protection certification, seals and marks;
   d) established procedures and structures to handle *complaints* about infringements of the certification or the manner in which the certification has been, or is being, implemented by the controller or processor, and to make those procedures and structures transparent to data subjects and the public; and
   e) demonstrated, to the satisfaction of the competent supervisory authority, that their tasks and duties do not result in a conflict of interests.
3. The accreditation of certification bodies as referred to in paragraphs 1 and 2 of this Article shall take place on the basis of criteria approved by the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63. In the case of accreditation pursuant to point (b) of paragraph 1 of this Article, those

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requirements shall complement those envisaged in Regulation (EC) No 765/2008 and the technical rules that describe the methods and procedures of the certification bodies.

4. The certification bodies referred to in paragraph 1 shall be responsible for the *proper assessment* leading to the certification or the withdrawal of such certification without prejudice to the responsibility of the controller or processor for compliance with this Regulation. The accreditation shall be issued for a maximum period of five years and may be renewed on the same conditions provided that the certification body meets the requirements set out in this Article.
5. The certification bodies referred to in paragraph 1 shall provide the competent supervisory authorities with the *reasons* for *granting* or *withdrawing* the requested certification.
6. The requirements referred to in paragraph 3 of this Article and the criteria referred to in Article 42(5) shall be made public by the supervisory authority in an easily accessible form. The supervisory authorities shall also transmit those requirements and criteria to the Board. The Board shall *collate all certification mechanisms* and data protection seals in a register and shall make them publicly available by any appropriate means.
7. Without prejudice to Chapter VIII, the competent supervisory authority or the national accreditation body shall revoke an accreditation of a certification body pursuant to paragraph 1 of this Article where the conditions for the accreditation are not, or are no longer, met or where actions taken by a certification body infringe this Regulation.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92 for the purpose of specifying the requirements to be taken into account for the data protection certification mechanisms referred to in Article 42(1).
9. The Commission may adopt *implementing acts* laying down *technical standards* for certification mechanisms and data protection seals and marks, and mechanisms to *promote* and *recognise* those certification mechanisms, seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

41-45

Certification bodies that issue #gdpr privacy certificates must be accredited based on, expertise and independence among other things.

CHAPTER V TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Article 44 General principle for transfers

Recitals: 101, 102

€0 - €20m or up to 4%

Any *transfer* of personal data which are undergoing processing or are intended for processing after transfer to a *third country* or to an *international organisation* shall take place *only* if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions in this Chapter shall be applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined.

Personal data shall not be passed on to countries outside the EU without fulfilling #gdpr conditions.

41-45

Article 45 Transfers on the basis of an adequacy decision

Recitals: 101-109, 169

€0 - €20m or up to 4%

1. A transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an *adequate level of protection*. Such a transfer shall not require any specific authorisation.
2. When assessing the *adequacy* of the level of protection, the Commission shall, in particular, take account of the following elements:
   a) the *rule of law*, respect for *human rights* and *fundamental freedoms*, *relevant legislation*, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, *data protection* rules, *professional rules* and *security measures*, including rules for the onward transfer of personal data to another third country or international organisation which are complied with in that country or international organisation, *case-law*, as well as *effective* and *enforceable data subject rights* and effective *administrative* and *judicial*

redress for the data subjects whose personal data are being transferred;

b) the *existence* and *effective functioning* of one or more *independent supervisory authorities* in the third country or to which an international organisation is subject, with responsibility for ensuring and *enforcing compliance* with the data protection rules, including *adequate enforcement powers*, for assisting and advising the data subjects in exercising their rights and for cooperation with the supervisory authorities of the Member States; and

c) the *international commitments* the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

3. The Commission, after assessing the adequacy of the level of protection, may decide, by means of implementing act, that a third country, a territory or one or more specified sectors within a third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2 of this Article. The implementing act shall provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation. The implementing act shall specify its territorial and sectoral application and, where applicable, identify the supervisory authority or authorities referred to in point (b) of paragraph 2 of this Article. The implementing act shall be adopted *in accordance* with the *examination procedure* referred to in Article 93(2).
4. The Commission shall, on an ongoing basis, monitor developments in third countries and international organisations that could affect the functioning of decisions adopted pursuant to paragraph 3 of this Article and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC.
5. The Commission shall, where available information reveals, in particular following the review referred to in paragraph 3 of this Article, that a third country, a territory or one or more specified sectors within a third country, or an international organisation *no longer* ensures an adequate level of protection within the meaning of paragraph 2 of this Article, to the extent necessary, *repeal*, *amend* or *suspend* the decision referred to in paragraph 3 of this Article by means of implementing acts without retro-active effect. Those implementing acts shall be

41-45

adopted in accordance with the examination procedure referred to in Article 93(2). On duly justified imperative grounds of *urgency*, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 93(3).

6. The Commission shall enter into *consultations* with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to paragraph 5.
7. A decision pursuant to paragraph 5 of this Article is without prejudice to transfers of personal data to the third country, a territory or one or more specified sectors within that third country, or the international organisation in question pursuant to Articles 46 to 49.
8. The Commission shall *publish* in the Official Journal of the European Union and on its website a list of the third countries, territories and specified sectors within a third country and international organisations for which it has decided that an adequate level of protection is or is no longer ensured.
9. Decisions adopted by the Commission on the basis of Article 25(6) of Directive 95/46/EC shall remain in force until amended, replaced or repealed by a Commission Decision adopted in accordance with paragraph 3 or 5 of this Article.

46-50

An adequacy decision means that the European Commission decides that data can be transferred to specific countries outside the EU. #gdpr

Article 46 Transfers subject to appropriate safeguards

Recitals: 108, 109

€0 - €20m or up to 4%

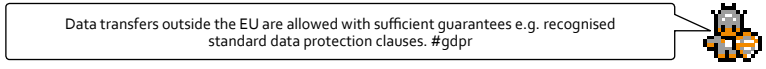
1. In the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has provided *appropriate safeguards*, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.
2. The appropriate safeguards referred to in paragraph 1 may be provided for, without requiring any specific authorisation from a supervisory authority, by:

a) a legally binding and enforceable *instrument* between public authorities or bodies;

b) binding corporate rules in accordance with Article 47;

c) standard data protection clauses adopted by the Commission in accordance with the *examination procedure* referred to in Article 93(2);
d) standard data protection clauses adopted by a supervisory authority and approved by the Commission pursuant to the *examination procedure* referred to in Article 93(2);
e) an approved *code of conduct* pursuant to Article 40 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights; or
f) an approved *certification mechanism* pursuant to Article 42 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights.

3. Subject to the authorisation from the competent supervisory authority, the appropriate safeguards referred to in paragraph 1 may also be provided for, in particular, by:
   a) *contractual clauses* between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation; or
   b) *provisions* to be inserted into *administrative arrangements* between public authorities or bodies which include enforceable and effective data subject rights.
4. The supervisory authority shall apply the *consistency mechanism* referred to in Article 63 in the cases referred to in paragraph 3 of this Article.
5. Authorisations by a Member State or supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid until amended, replaced or repealed, if necessary, by that supervisory authority. Decisions adopted by the Commission on the basis of Article 26(4) of Directive 95/46/EC shall remain in force until amended, replaced or repealed, if necessary, by a Commission Decision adopted in accordance with paragraph 2 of this Article.



Article 47 Binding corporate rules

Recital: 110

€0 - €20m or up to 4%

1. The competent supervisory authority shall approve *binding corporate rules* in accordance with the consistency mechanism set out in Article 63, provided that they:
   a) are *legally binding* and apply to and are enforced by *every member concerned* of the *group of undertakings*, or group of enterprises engaged in a *joint economic activity*, including their employees;
   b) *expressly confer* enforceable rights on data subjects with regard to the processing of their personal data; and
   c) fulfil the requirements laid down in paragraph 2.
2. The binding corporate rules referred to in paragraph 1 shall specify at least:
   a) the *structure* and *contact details* of the group of undertakings, or group of enterprises engaged in a joint economic activity and of each of its members;
   b) the data *transfers* or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;
   c) their *legally binding nature*, both internally and externally;
   d) the *application* of the general data protection *principles*, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules;
   e) the *rights of data subjects* in regard to processing and the *means* to exercise those rights, including the right not to be subject to decisions based solely on automated processing, including profiling in accordance with Article 22, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;
   f) the *acceptance* by the controller or processor established on the territory of a Member State of *liability* for any breaches of the binding corporate rules by any member concerned not established in

the Union; the controller or the processor shall be exempt from that liability, in whole or in part, only if it proves that that member is not responsible for the event giving rise to the damage;

g) how the *information* on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph *is provided* to the data subjects in addition to Articles 13 and 14;

h) the *tasks* of any data protection officer designated in accordance with Article 37 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, or group of enterprises engaged in a joint economic activity, as well as monitoring training and complaint-handling;

i) the *complaint procedures*;

j) the *mechanisms* within the group of undertakings, or group of enterprises engaged in a joint economic activity for ensuring the *verification of compliance* with the binding corporate rules. Such mechanisms shall include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. Results of such verification should be communicated to the person or entity referred to in point (h) and to the board of the controlling undertaking of a group of undertakings, or of the group of enterprises engaged in a joint economic activity, and should be available upon request to the competent supervisory authority;

k) the mechanisms for reporting and recording *changes* to the rules and reporting those changes to the supervisory authority;

l) the *cooperation mechanism* with the supervisory authority to ensure compliance by any member of the group of undertakings, or group of enterprises engaged in a joint economic activity, in particular by making available to the supervisory authority the results of verifications of the measures referred to in point (j);

m) the mechanisms for reporting to the competent supervisory authority any *legal requirements* to which a member of the group of undertakings, or group of enterprises engaged in a joint economic activity is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and

n) the appropriate data protection *training to personnel* having permanent or regular access to personal data.

46-50

3. The Commission may specify the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 93(2).

Binding corporate rules may also allow for the transfer of specific data outside the EU for multinationals. #gdpr

Article 48 Transfers or disclosures not authorised by Union law

Recital: 115

€0 - €20m or up to 4%

Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an *international agreement*, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State, without prejudice to other grounds for transfer pursuant to this Chapter.

Data transfers outside the EU based on court decisions are only allowed if there is a (legal) treaty. #gdpr

46-50

Article 49 Derogations for specific situations

Recitals: 111-115

€0 - €20m or up to 4%

1. In the absence of an adequacy decision pursuant to Article 45(3), or of appropriate safeguards pursuant to Article 46, including binding corporate rules, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions:
   a) the data subject has *explicitly consented* to the proposed transfer, after having been *informed* of the possible *risks* of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;
   b) the transfer is necessary for the *performance of a contract* between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request;
   c) the transfer is necessary for the conclusion or performance of a *contract* concluded in the *interest of the data subject* between the controller and another natural or legal person;

d) the transfer is necessary for *important reasons of public interest*;
e) the transfer is necessary for the *establishment, exercise or defence of legal claims*;
f) the transfer is necessary in order to protect the *vital interests* of the data subject or of other persons, where the data subject is physically or legally *incapable* of giving consent;
g) the transfer is made from a *register* which according to Union or Member State law is intended to provide information to the public and which is *open to consultation* either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case.

Where a transfer could not be based on a provision in Article 45 or 46, including the provisions on binding corporate rules, and none of the derogations for a specific situation referred to in the first subparagraph of this paragraph is applicable, a transfer to a third country or an international organisation *may take place only* if the transfer is *not repetitive*, concerns only a *limited number* of data subjects, is necessary for the purposes of *compelling legitimate interests* pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject, and the controller has assessed all the *circumstances* surrounding the data transfer and has on the basis of that assessment provided *suitable safeguards* with regard to the protection of personal data. The controller shall inform the supervisory authority of the transfer. The controller shall, in addition to providing the information referred to in Articles 13 and 14, inform the data subject of the transfer and on the compelling legitimate interests pursued.

2. A transfer pursuant to point (g) of the first subparagraph of paragraph 1 shall not involve the *entirety* of the personal data or entire categories of the personal data contained in the register. Where the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the *request* of those persons or if they are to be the recipients.
3. Points (a), (b) and (c) of the first subparagraph of paragraph 1 and the second subparagraph thereof shall not apply to activities carried out by *public authorities* in the exercise of their public powers.
4. The public interest referred to in point (d) of the first subparagraph of paragraph 1 shall be recognised in Union law or in the law of the Member State to which the controller is subject.

5. In the absence of an adequacy decision, Union or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of personal data to a third country or an international organisation. Member States shall notify such provisions to the Commission.
6. The controller or processor shall *document* the assessment as well as the suitable safeguards referred to in the second subparagraph of paragraph 1 of this Article in the records referred to in Article 30.

Consent, performance of contracts or vital interests can also be grounds for data transfers outside the EU. #gdpr

Article 50 International cooperation for the protection of personal data

Recital: 116

In relation to third countries and international organisations, the Commission and supervisory authorities shall take appropriate steps to:

a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;
b) provide international *mutual assistance* in the enforcement of legislation for the protection of personal data, including through *notification*, *complaint referral*, *investigative assistance* and *information exchange*, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;
c) engage *relevant stakeholders* in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data;
d) promote the *exchange* and *documentation* of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

The European Commission promotes international privacy cooperation. #gdpr

CHAPTER VI INDEPENDENT SUPERVISORY AUTHORITIES

SECTION 1 INDEPENDENT STATUS

Article 51 Supervisory authority

Recitals: 117, 119, 123

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.

Each Member State has an authority. Authorities help ensure that the application of the #gdpr is consistent.

Article 52 Independence

Recitals: 118, 120

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.
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.

The authority is independent and must have sufficient resources. #gdpr

Article 53 General conditions for the members of the supervisory authority

Recital: 121

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.

Members of the authority e.g. its chair, are qualified and are appointed in a transparent way. They can't be dismissed easily. #gdpr

Article 54 Rules on the establishment of the supervisory authority

Recital: 121

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 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.

The authority's establishment and certain rules for appointing its members are established by law. #gdpr

SECTION 2 COMPETENCE, TASKS AND POWERS

Article 55 Competence

Recitals: 20, 122, 123, 128

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.

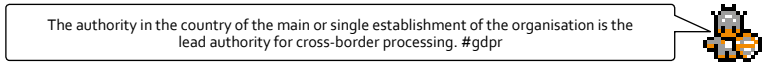
The authority is competent to perform its tasks. It doesn't supervise the processing activities of courts. #gdpr

Article 56 Competence of the lead supervisory authority

Recitals: 36, 124-128, 130, 131

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 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

Recitals: 122, 123

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;

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   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);
   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.

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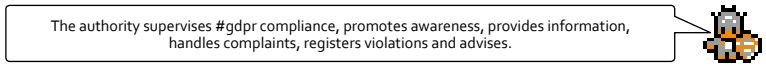
3. The performance of the tasks of each supervisory authority shall be *free of charge* for the data subject and, where applicable, for the data protection officer.
4. Where requests are *manifestly unfounded* or excessive, in particular because of their repetitive character, the supervisory authority 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

Recitals: 122, 129

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:

€0 - €20m or up to 4%

   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.

€0 - €20m or up to 4%

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);

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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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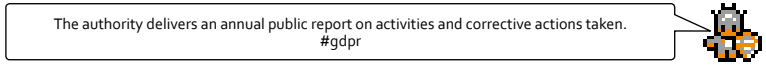
Article 59 Activity reports

No recitals

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.



CHAPTER VII COOPERATION AND CONSISTENCY

SECTION 1 COOPERATION

Article 60 Cooperation between the lead supervisory authority and the other supervisory authorities concerned

Recitals: 130, 131, 138

1. The lead supervisory authority shall *cooperate* with the other supervisory authorities concerned in accordance with this Article in an endeavour to reach *consensus*. The lead supervisory authority and the supervisory authorities concerned shall *exchange* all relevant *information* with each other.
2. The lead supervisory authority may *request* at any time other supervisory authorities concerned to provide *mutual assistance* pursuant to Article 61 and may conduct joint operations pursuant to Article 62, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.
3. The lead supervisory authority shall, without delay, *communicate* the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views.
4. Where any of the other supervisory authorities concerned within a period of four weeks after having been consulted in accordance with paragraph 3 of this Article, expresses a relevant and reasoned objection to the draft decision, the lead supervisory authority shall, if it does not follow the relevant and reasoned objection or is of the opinion that the objection is not relevant or reasoned, submit the matter to the *consistency mechanism* referred to in Article 63.
5. Where the lead supervisory authority intends to follow the relevant and reasoned objection made, it shall submit to the other supervisory authorities concerned a *revised draft decision* for their opinion. That revised draft decision shall be subject to the procedure referred to in paragraph 4 within a period of two weeks.
6. Where none of the other supervisory authorities concerned has objected to the draft decision submitted by the lead supervisory authority within the period referred to in paragraphs 4 and 5, the lead supervisory authority and the supervisory authorities concerned shall be *deemed* to be *in agreement* with that draft decision and shall be bound by it.

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7. The lead supervisory authority shall *adopt* and *notify* the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds. The supervisory authority with which a complaint has been lodged shall inform the complainant on the decision.
8. By *derogation* from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.
9. Where the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of a complaint and to act on other parts of that complaint, a *separate decision* shall be adopted for each of those parts of the matter. The lead supervisory authority shall adopt the decision for the part concerning actions in relation to the controller, shall notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State and shall inform the complainant thereof, while the supervisory authority of the complainant shall adopt the decision for the part concerning dismissal or rejection of that complaint, and shall notify it to that complainant and shall inform the controller or processor thereof.
10. After being notified of the decision of the lead supervisory authority pursuant to paragraphs 7 and 9, the controller or processor shall take the *necessary measures* to ensure compliance with the decision as regards processing activities in the context of all its establishments in the Union. The controller or processor shall notify the measures taken for complying with the decision to the lead supervisory authority, which shall inform the other supervisory authorities concerned.
11. Where, in exceptional circumstances, a supervisory authority concerned has reasons to consider that there is an *urgent need* to act in order to protect the interests of data subjects, the *urgency procedure* referred to in Article 66 shall apply.
12. The lead supervisory authority and the other supervisory authorities concerned shall supply the information required under this Article to each other by electronic means, using a standardised format.

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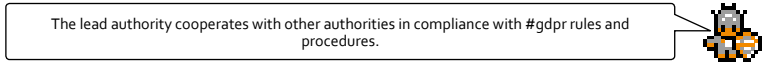

Article 61 Mutual assistance

Recital: 133

1. Supervisory authorities shall provide each other with relevant information and *mutual assistance* in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, *information requests* and *supervisory measures*, such as requests to carry out *prior authorisations* and *consultations*, *inspections* and *investigations*.
2. Each supervisory authority shall take all appropriate measures required to reply to a *request* of another supervisory authority without undue delay and no later than one month after receiving the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation.
3. Requests for assistance shall contain all the necessary information, including the *purpose* of and *reasons* for the request. Information exchanged shall be used only for the purpose for which it was requested.
4. The requested supervisory authority shall *not refuse* to comply with the request *unless*:
   a) it is *not competent* for the subject-matter of the request or for the measures it is requested to execute; or
   b) compliance with the request would *infringe* this Regulation or Union or Member State law to which the supervisory authority receiving the request is subject.
5. The requested supervisory authority shall inform the requesting supervisory authority of the *results* or, as the case may be, of the progress of the measures taken in order to respond to the request. The requested supervisory authority shall provide reasons for any refusal to comply with a request pursuant to paragraph 4.
6. Requested supervisory authorities shall, as a rule, *supply* the information requested by other supervisory authorities by electronic means, using a standardised format.
7. Requested supervisory authorities shall *not charge a fee* for any action taken by them pursuant to a request for mutual assistance. Supervisory authorities may agree on rules to indemnify each other for specific expenditure arising from the provision of mutual assistance in exceptional circumstances.
8. Where a supervisory authority does not provide the information referred to in paragraph 5 of this Article within one month of receiving

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the request of another supervisory authority, the requesting supervisory authority may adopt a *provisional measure* on the territory of its Member State in accordance with Article 55(1). In that case, the urgent need to act under Article 66(1) shall be *presumed* to be met and require an urgent binding decision from the Board pursuant to Article 66(2).

9. The Commission may, by means of implementing acts, *specify* the *format* and *procedures* for mutual assistance referred to in this Article and the arrangements for *the exchange of information by electronic means* between supervisory authorities, and between supervisory authorities and the Board, in particular the standardised format referred to in paragraph 6 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).

Authorities provide each other with information and mutual assistance to apply the #gdpr consistently.

Article 62 Joint operations of supervisory authorities

Recitals: 132, 134

1. The supervisory authorities shall, where appropriate, conduct *joint operations* including joint investigations and joint enforcement measures in which members or staff of the supervisory authorities of other Member States are involved.
2. Where the controller or processor has establishments in *several* Member States or where a significant number of data subjects in more than one Member State are likely to be substantially affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in joint operations. The supervisory authority which is competent pursuant to Article 56(1) or (4) shall invite the supervisory authority of each of those Member States to take part in the joint operations and shall respond without delay to the request of a supervisory authority to participate.
3. A supervisory authority may, in accordance with Member State law, and with the seconding supervisory authority's authorisation, *confer powers*, including investigative powers on the seconding supervisory authority's members or staff involved in joint operations or, in so far as the law of the Member State of the host supervisory authority permits, allow the seconding supervisory authority's members or staff to exercise their investigative powers in accordance with the law of the

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Member State of the seconding supervisory authority. Such investigative powers may be exercised only under the guidance and in the presence of members or staff of the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the Member State law of the host supervisory authority.

4. Where, in accordance with paragraph 1, staff of a seconding supervisory authority operate in another Member State, the Member State of the host supervisory authority shall *assume responsibility* for their actions, *including liability*, for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
5. The Member State in whose territory the damage was caused shall *make good* such *damage* under the conditions applicable to damage caused by its own staff. The Member State of the seconding supervisory authority whose staff has caused damage to any person in the territory of another Member State shall *reimburse* that other Member State in full any sums it has paid to the persons entitled on their behalf.
6. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 5, each Member State shall *refrain*, in the case provided for in paragraph 1, from *requesting reimbursement* from another Member State in relation to damage referred to in paragraph 4.
7. Where a joint operation is intended and a supervisory authority does not, within one month, comply with the obligation laid down in the second sentence of paragraph 2 of this Article, the other supervisory authorities may adopt a *provisional measure* on the territory of its Member State in accordance with Article 55. In that case, the urgent need to act under Article 66(1) shall be *presumed* to be met and require an opinion or an urgent binding decision from the Board pursuant to Article 66(2).

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Authorities can operate, investigate and enforce together. #gdpr

SECTION 2 CONSISTENCY

Article 63 Consistency mechanism

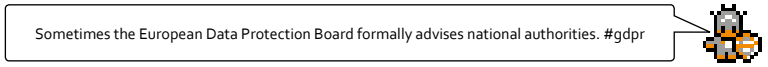
Recital: 135

In order to contribute to the consistent application of this Regulation throughout the Union, the supervisory authorities shall cooperate with each other and, where relevant, with the Commission, through the *consistency mechanism* as set out in this Section.

Article 64 Opinion of the Board

Recital: 136

1. The Board shall issue an *opinion* where a competent supervisory authority intends to *adopt any of the measures below*. To that end, the competent supervisory authority shall communicate the draft decision to the Board, when it:
   a) aims to adopt a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 35(4);
   b) concerns a matter pursuant to Article 40(7) whether a draft code of conduct or an amendment or extension to a code of conduct complies with this Regulation;
   c) aims to approve the criteria for accreditation of a body pursuant to Article 41(3) or a certification body pursuant to Article 43(3);
   d) aims to determine standard data protection clauses referred to in point (d) of Article 46(2) and in Article 28(8);
   e) aims to authorise contractual clauses referred to in point (a) of Article 46(3); or
   f) aims to approve binding corporate rules within the meaning of Article 47.
2. Any supervisory authority, the Chair of the Board or the Commission *may request* that any matter of general application or producing effects in more than one Member State be *examined* by the Board with a view to obtaining an opinion, in particular where a competent supervisory authority does not comply with the obligations for mutual assistance in accordance with Article 61 or for joint operations in accordance with Article 62.
3. In the cases referred to in paragraphs 1 and 2, the Board shall issue an opinion on the matter submitted to it provided that it has not already issued an opinion on the same matter. That opinion shall be adopted within eight weeks by simple majority of the members of the Board. That period may be extended by a further six weeks, taking into account the complexity of the subject matter. Regarding the draft decision referred to in paragraph 1 circulated to the members of the Board in accordance with paragraph 5, a member which has not objected within a reasonable period indicated by the Chair, shall be deemed to be in agreement with the draft decision.
4. Supervisory authorities and the Commission shall, without undue delay, communicate by electronic means to the Board, using a standardised format any relevant information, including as the case may be a summary of the facts, the draft decision, the grounds which make the enactment of such measure necessary, and the views of other supervisory authorities concerned.
5. The Chair of the Board shall, without undue delay, inform by electronic means:
   a) the members of the Board and the Commission of any relevant information which has been communicated to it using a standardised format. The secretariat of the Board shall, where necessary, provide translations of relevant information; and
   b) the supervisory authority referred to, as the case may be, in paragraphs 1 and 2, and the Commission of the opinion and make it public.
6. The competent supervisory authority shall not adopt its draft decision referred to in paragraph 1 within the period referred to in paragraph 3.
7. The supervisory authority referred to in paragraph 1 shall take utmost account of the opinion of the Board and shall, within two weeks after receiving the opinion, communicate to the Chair of the Board by electronic means whether it will maintain or amend its draft decision and, if any, the amended draft decision, using a standardised format.
8. Where the supervisory authority concerned informs the Chair of the Board within the period referred to in paragraph 7 of this Article that it does not intend to follow the opinion of the Board, in whole or in part, providing the relevant grounds, Article 65(1) shall apply.



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Article 65 Dispute resolution by the Board

Recital: 136

1. In order to ensure the correct and consistent application of this Regulation in individual cases, the Board shall adopt a *binding decision* in the following cases:
   a) where, in a case referred to in Article 60(4), a supervisory authority concerned has *raised* a relevant and reasoned *objection* to a draft decision of the lead authority or the lead authority has rejected such an objection as being not relevant or reasoned. The binding decision shall concern all the matters which are the subject of the relevant and reasoned objection, in particular whether there is an infringement of this Regulation;
   b) where there are *conflicting views* on which of the supervisory authorities concerned is competent for the main establishment;
   c) where a competent supervisory authority does *not request* the opinion of the Board in the cases referred to in Article 64(1), or does *not follow* the opinion of the Board issued under Article 64. In that case, any supervisory authority concerned or the Commission may communicate the matter to the Board.
2. The decision referred to in paragraph 1 shall be adopted within one month from the referral of the subject-matter by a two-thirds majority of the members of the Board. That period may be extended by a further month on account of the complexity of the subject-matter. The decision referred to in paragraph 1 shall be reasoned and addressed to the lead supervisory authority and all the supervisory authorities concerned and binding on them.
3. Where the Board has been unable to adopt a decision within the periods referred to in paragraph 2, it shall adopt its decision within two weeks following the expiration of the second month referred to in paragraph 2 by a simple majority of the members of the Board. Where the members of the Board are split, the decision shall by adopted by the vote of its Chair.
4. The supervisory authorities concerned shall not adopt a decision on the subject matter submitted to the Board under paragraph 1 during the periods referred to in paragraphs 2 and 3.
5. The Chair of the Board shall notify, without undue delay, the decision referred to in paragraph 1 to the supervisory authorities concerned. It shall inform the Commission thereof. The decision shall be *published* on the website of the Board without delay after the supervisory authority has notified the final decision referred to in paragraph 6.

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6. The lead supervisory authority or, as the case may be, the supervisory authority with which the complaint has been lodged shall adopt its *final decision* on the basis of the decision referred to in paragraph 1 of this Article, without undue delay and at the latest by one month after the Board has notified its decision. The lead supervisory authority or, as the case may be, the supervisory authority with which the complaint has been lodged, shall inform the Board of the date when its final decision is notified respectively to the controller or the processor and to the data subject. The final decision of the supervisory authorities concerned shall be adopted under the terms of Article 60(7), (8) and (9). The final decision shall refer to the decision referred to in paragraph 1 of this Article and shall specify that the decision referred to in that paragraph will be published on the website of the Board in accordance with paragraph 5 of this Article. The final decision shall attach the decision referred to in paragraph 1 of this Article.

The European Data Protection Board sometimes makes binding decisions on supervisory disputes. #gdpr

Article 66 Urgency procedure

Recital: 137

1. In *exceptional circumstances*, where a supervisory authority concerned considers that there is an *urgent need* to act in order to protect the rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Articles 63, 64 and 65 or the procedure referred to in Article 60, *immediately* adopt *provisional measures* intended to produce legal effects on its own territory with a specified period of validity which shall not exceed three months. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them to the other supervisory authorities concerned, to the Board and to the Commission.
2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may *request* an urgent opinion or an urgent binding decision from the Board, giving reasons for requesting such opinion or decision.
3. Any supervisory authority may request an urgent opinion or an urgent binding decision, as the case may be, from the Board where a competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the

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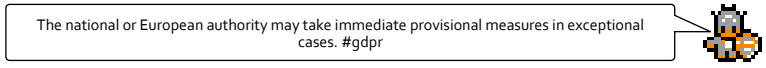
rights and freedoms of data subjects, giving reasons for requesting such opinion or decision, including for the urgent need to act.

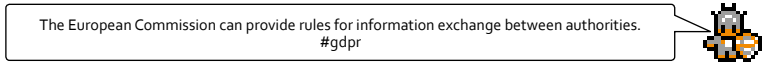
4. By derogation from Article 64(3) and Article 65(2), an urgent opinion or an urgent binding decision referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the Board.



Article 67 Exchange of information

Recitals: 116, 135

The Commission may adopt implementing acts of general scope in order to specify the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the Board, in particular the standardised format referred to in Article 64. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 93(2).



SECTION 3 EUROPEAN DATA PROTECTION BOARD

Article 68 European Data Protection Board

Recital: 139

1. The *European Data Protection Board* (the 'Board') is hereby established as a body of the Union and shall have legal personality.
2. The Board shall be represented by its Chair.
3. The Board shall be composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor, or their respective representatives.
4. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, a *joint representative* shall be appointed in accordance with that Member State's law.
5. The Commission shall have the right to *participate* in the activities and meetings of the Board without voting right. The Commission shall

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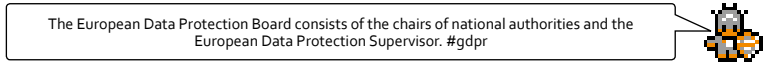
designate a representative. The Chair of the Board shall communicate to the Commission the activities of the Board.

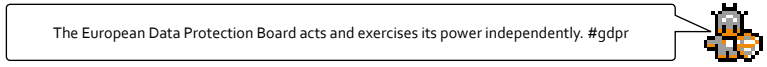
6. In the cases referred to in Article 65, the European Data Protection Supervisor shall have *voting rights* only on decisions which concern principles and rules applicable to the Union institutions, bodies, offices and agencies which correspond in substance to those of this Regulation.



Article 69 Independence

Recital: 139

1. The Board shall act *independently* when performing its tasks or exercising its powers pursuant to Articles 70 and 71.
2. Without prejudice to requests by the Commission referred to in point (b) of Article 70(1) and in Article 70(2), the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from anybody.



Article 70 Tasks of the Board

Recital: 139

1. The Board shall ensure the *consistent application* of this Regulation. To that end, the Board shall, on its *own initiative* or, where relevant, at the *request* of the Commission, in particular:
   a) *monitor* and *ensure* the correct application of this Regulation in the cases provided for in Articles 64 and 65 without prejudice to the tasks of national supervisory authorities;
   b) *advise* the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;
   c) *advise* the Commission on the *format* and *procedures* for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules;
   d) issue guidelines, recommendations, and best *practices* on *procedures* for erasing links, copies or replications of personal data from publicly available communication services as referred to in Article 17(2);

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e) examine, on its own initiative, on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation;

f) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for further specifying the criteria and conditions for decisions based on *profiling* pursuant to Article 22(2);

g) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for establishing the personal *data breaches* and determining the undue delay referred to in Article 33(1) and (2) and for the particular circumstances in which a controller or a processor is required to notify the personal data breach;

h) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph as to the *circumstances* in which a personal data breach is likely to result in a high risk to the rights and freedoms of the natural persons referred to in Article 34(1).

i) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for the purpose of further specifying the criteria and requirements for personal data *transfers* based on *binding corporate rules* adhered to by controllers and binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned referred to in Article 47;

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j) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for the purpose of further specifying the criteria and requirements for the personal data *transfers* on the basis of Article 49(1);

k) draw up guidelines for supervisory authorities concerning the application of measures referred to in Article 58(1), (2) and (3) and the setting of *administrative fines* pursuant to Article 83;

l) review the *practical application* of the guidelines, recommendations and best practices referred to in points (e) and (f);

m) issue guidelines, recommendations and best practices in accordance with point (e) of this paragraph for establishing *common procedures* for reporting by natural persons of *infringements* of this Regulation pursuant to Article 54(2);

n) encourage the drawing-up of codes of conduct and the establishment of data protection *certification mechanisms* and data protection seals and marks pursuant to Articles 40 and 42;

o) carry out the *accreditation* of certification bodies and its periodic review pursuant to Article 43 and maintain a public register of accredited bodies pursuant to Article 43(6) and of the accredited controllers or processors established in third countries pursuant to Article 42(7);

p) specify the requirements referred to in Article 43(3) with a view to the accreditation of certification bodies under Article 42;

q) provide the Commission with an *opinion* on the certification requirements referred to in Article 43(8);

r) provide the Commission with an *opinion* on the *icons* referred to in Article 12(7);

s) provide the Commission with an *opinion* for the *assessment of the adequacy* of the level of protection in a third country or international organisation, including for the assessment whether a third country, a territory or one or more specified sectors within that third country, or an international organisation no longer ensures an adequate level of protection. To that end, the Commission shall provide the Board with all necessary documentation, including correspondence with the government of the third country, with regard to that third country, territory or specified sector, or with the international organisation.

t) issue *opinions* on *draft decisions* of supervisory authorities pursuant to the consistency mechanism referred to in Article 64(1), on matters submitted pursuant to Article 64(2) and to issue binding decisions pursuant to Article 65, including in cases referred to in Article 66;

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u) promote the *cooperation* and the effective bilateral and multilateral exchange of information and best practices between the supervisory authorities;

v) promote common training programmes and facilitate personnel exchanges between the supervisory authorities and, where appropriate, with the supervisory authorities of third countries or with international organisations;

w) promote the *exchange* of *knowledge* and documentation on data protection legislation and practice with data protection supervisory authorities worldwide.

x) issue opinions on *codes* of *conduct* drawn up at Union level pursuant to Article 40(9); and

y) maintain a *publicly accessible electronic register* of *decisions* taken by supervisory authorities and courts on issues handled in the consistency mechanism.

2. Where the Commission requests advice from the Board, it may indicate a time limit, taking into account the urgency of the matter.
3. The Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 93 and make them public.
4. The Board shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period. The Board shall, without prejudice to Article 76, make the results of the consultation procedure publicly available.

The European Data Protection Board has a wide range of investigative, advisory and knowledge-promoting tasks. #gdpr

Article 71 Reports

Recital: 139

1. The Board shall draw up an *annual report* regarding the protection of natural persons with regard to processing in the Union and, where relevant, in third countries and international organisations. The report shall be made *public* and be transmitted to the European Parliament, to the Council and to the Commission.
2. The annual report shall include a *review* of the *practical application* of the guidelines, recommendations and best practices referred to in point (l) of Article 70(1) as well as of the binding decisions referred to in Article 65.

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The European Data Protection Board delivers an annual public report reviewing how privacy guidelines are applied in practice. #gdpr

Article 72 Procedure

Recital: 139

1. The Board shall take decisions by a *simple majority* of its members, unless otherwise provided for in this Regulation.
2. The Board shall adopt its *own rules of procedure* by a two-thirds majority of its members and organise its *own operational arrangements*.

The European Data Protection Board typically decides by a majority vote. #gdpr

Article 73 Chair

Recital: 139

1. The Board shall elect a *chair* and *two deputy chairs* from amongst its members by simple majority.
2. The *term* of office of the Chair and of the deputy chairs shall be *five years* and be renewable once.

The European Data Protection Board elects a chair and two vice-chairs for five years. #gdpr

Article 74 Tasks of the Chair

Recital: 139

1. The Chair shall have the *following tasks*:
   a) to convene the meetings of the Board and prepare its agenda;
   b) to notify decisions adopted by the Board pursuant to Article 65 to the lead supervisory authority and the supervisory authorities concerned;
   c) to ensure the timely performance of the tasks of the Board, in particular in relation to the consistency mechanism referred to in Article 63.
2. The Board shall lay down the allocation of tasks between the Chair and the deputy chairs in its rules of procedure.

The chair of the European Data Protection Board organises meetings, notifies authorities of decisions and monitors consistency mechanisms and actions. #gdpr

Article 75 Secretariat

Recital: 140

1. The Board shall have a *secretariat*, which shall be provided by the European Data Protection Supervisor.
2. The secretariat shall perform its tasks exclusively under the instructions of the Chair of the Board.
3. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation shall be subject to separate reporting lines from the staff involved in carrying out tasks conferred on the European Data Protection Supervisor.
4. Where appropriate, the Board and the European Data Protection Supervisor shall establish and publish a *Memorandum of Understanding* implementing this Article, determining the terms of their cooperation, and applicable to the staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the Board by this Regulation.

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5. The secretariat shall provide *analytical*, *administrative* and *logistical support* to the Board.
6. The secretariat shall be responsible in particular for:
   a) the day-to-day business of the Board;
   b) communication between the members of the Board, its Chair and the Commission;
   c) communication with other institutions and the public;
   d) the use of electronic means for the internal and external communication;
   e) the translation of relevant information;
   f) the preparation and follow-up of the meetings of the Board;
   g) the preparation, drafting and publication of opinions, decisions on the settlement of disputes between supervisory authorities and other texts adopted by the Board.

The European Data Protection Board has a secretariat. #gdpr

Article 76 Confidentiality

No recitals

1. The discussions of the Board shall be *confidential* where the Board deems it necessary, as provided for in its rules of procedure.
2. Access to documents submitted to members of the Board, experts and representatives of third parties shall be governed by Regulation (EC) No 1049/2001 of the European Parliament and of the Council (21).

Discussions of the European Data Protection Board are confidential when necessary. #gdpr

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CHAPTER VIII REMEDIES, LIABILITY AND PENALTIES

Article 77 Right to lodge a complaint with a supervisory authority

Recital: 141

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to *lodge a complaint* with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement

if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.
2. The supervisory authority with which the complaint has been lodged shall inform the complainant on the *progress* and the *outcome* of the complaint including the possibility of a judicial remedy pursuant to Article 78.

Data subjects can file a complaint with the authority if they believe the processing of their data violates the #gdpr.

Article 78 Right to an effective judicial remedy against a supervisory authority

Recitals: 143, 144

1. Without prejudice to any other administrative or non-judicial remedy, *each natural or legal person* shall have the right to an *effective judicial remedy* against a legally binding decision of a supervisory authority concerning them.
2. Without prejudice to any other administrative or non-judicial remedy, *each data subject* shall have the right to a an *effective judicial remedy* where the supervisory authority which is competent pursuant to Articles 55 and 56 does *not handle* a complaint or does not inform the data subject within three months on the progress or outcome of the complaint lodged pursuant to Article 77.
3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.
4. Where proceedings are brought against a decision of a supervisory authority which was preceded by an opinion or a decision of the Board in the consistency mechanism, the supervisory authority shall forward that opinion or decision to the court.

Natural or legal persons can appeal against decisions of their authority. #gdpr

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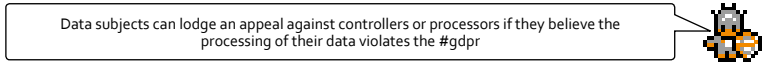
Article 79 Right to an effective judicial remedy against a controller or processor

Recital: 145

1. Without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority pursuant to Article 77, each data subject shall have the right to an *effective judicial remedy* where he or she considers that his or her

rights under this Regulation have been *infringed* as a result of the processing of his or her personal data in non-compliance with this Regulation.
2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an *establishment*. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his or her habitual residence, *unless* the controller or processor is a *public authority* of a Member State acting in the exercise of its public powers.



Article 80 Representation of data subjects

Recital: 142

1. The data subject shall have the right to *mandate* a *not-for-profit body*, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data to lodge the complaint on his or her behalf, to *exercise* the rights referred to in Articles 77, 78 and 79 on his or her *behalf*, and to exercise the right to receive compensation referred to in Article 82 on his or her behalf where provided for by Member State law.
2. Member States may provide that any body, organisation or association referred to in paragraph 1 of this Article, *independently* of a data subject's *mandate*, has the *right to lodge*, in that Member State, a *complaint* with the supervisory authority which is competent pursuant to Article 77 and to exercise the rights referred to in Articles 78 and 79 if it considers that the rights of a data subject under this Regulation have been infringed as a result of the processing.

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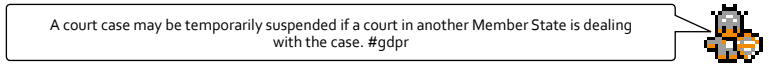
Article 81 Suspension of proceedings

No recitals

1. Where a competent court of a Member State has information on proceedings, concerning the same subject matter as

regards processing by the same controller or processor, that are pending in a court in another Member State, it shall contact that court in the other Member State to *confirm* the *existence* of such proceedings.
2. Where proceedings concerning the *same subject matter* as regards processing of the same controller or processor are pending in a court in another Member State, any competent court other than the court first seized may *suspend* its proceedings.
3. Where those proceedings are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the *consolidation* thereof.



Article 82 Right to compensation and liability

Recitals: 146, 147

1. Any person who has suffered *material* or *non-material damage* as a result of an infringement of this Regulation shall have the right to receive *compensation* from the controller or processor for the damage suffered.
2. Any controller *involved* in processing shall be *liable* for the damage *caused* by processing which *infringes* this Regulation. A processor shall be liable for the damage caused by processing *only* where it has *not complied* with obligations of this Regulation specifically directed to processors or where it has acted *outside* or contrary to *lawful instructions* of the controller.
3. A controller or processor shall be *exempt* from liability under paragraph 2 if it *proves* that it is *not* in any way *responsible* for the event giving rise to the damage.
4. Where more than one controller or processor, or both a controller and a processor, are involved in the same processing and where they are, under paragraphs 2 and 3, responsible for any damage caused by processing, *each* controller or processor shall be *held liable* for the *entire damage* in order to ensure effective compensation of the data subject.
5. Where a controller or processor has, in accordance with paragraph 4, *paid full compensation* for the damage suffered, that controller or processor shall be entitled to *claim back* from the other controllers or processors involved in the same processing that part of the compen-

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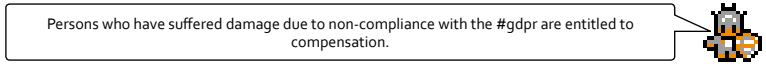
sation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 2.

6. Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under the law of the Member State referred to in Article 79(2).



Article 83 General conditions for imposing administrative fines

Recitals: 148-150, 152

1. Each supervisory authority shall *ensure* that the *imposition* of *administrative fines* pursuant to this Article in respect of infringements of this Regulation referred to in paragraphs 4, 5 and 6 shall in each individual case be *effective*, *proportionate* and *dissuasive*.
2. Administrative fines shall, depending on the circumstances of each individual case, be *imposed* in *addition* to, or *instead* of, measures referred to in points (a) to (h) and (j) of Article 58(2). When deciding whether to impose an administrative fine and deciding on the *amount* of the administrative fine in each individual case *due regard* shall be given to the following:
   a) the *nature*, *gravity* and *duration* of the *infringement* taking into account the *nature scope* or *purpose* of the processing concerned as well as the *number* of data subjects affected and the *level* of *damage* suffered by them;
   b) the *intentional* or *negligent character* of the infringement;
   c) any *action taken* by the controller or processor to *mitigate* the damage suffered by data subjects;
   d) the degree of *responsibility* of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 25 and 32;
   e) any relevant *previous infringements* by the controller or processor;
   f) the degree of *cooperation* with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
   g) the *categories of personal data* affected by the infringement;
   h) the *manner* in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor *notified* the infringement;

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   i) where measures referred to in Article 58(2) have *previously* been ordered against the controller or processor concerned with regard to the *same subject-matter*, compliance with those measures;
   j) *adherence* to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42; and
   k) any other *aggravating* or *mitigating factor* applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.
3. If a controller or processor *intentionally* or *negligently*, for the same or linked processing operations, *infringes* several provisions of this Regulation, the total amount of the administrative fine shall *not exceed* the amount specified for the *gravest infringement*.
4. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 10 000 000 EUR, or in the case of an undertaking, up to 2 % of the total worldwide annual *turnover* of the preceding financial year, *whichever is higher*:
   a) the obligations of the controller and the processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43;
   b) the obligations of the certification body pursuant to Articles 42 and 43;
   c) the obligations of the monitoring body pursuant to Article 41(4).
5. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, *whichever is higher*:
   a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;
   b) the data subjects' rights pursuant to Articles 12 to 22;
   c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;
   d) any obligations pursuant to Member State law adopted under Chapter IX;
   e) non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1).
6. Non-compliance with an *order* by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to administrative fines up to 20 000 000 EUR, or in

81-85

the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, *whichever is higher*.

7. Without prejudice to the corrective powers of supervisory authorities pursuant to Article 58(2), each Member State may lay down the rules on whether and to what extent administrative fines may be *imposed* on *public authorities* and bodies established in that Member State.
8. The exercise by the supervisory authority of its powers under this Article shall be subject to *appropriate procedural safeguards* in accordance with Union and Member State law, including effective judicial remedy and due process.
9. Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a manner that the fine is initiated by the competent supervisory authority and *imposed by competent national courts*, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by 25 May 2018 and, without delay, any subsequent amendment law or amendment affecting them.

Fines for non-compliance with the #gdpr are up to €20 million or up to 4% of annual worldwide turnover, whichever is higher.

Article 84 Penalties

Recitals: 149, 152

1. Member States shall lay down the rules on *other penalties* applicable to infringements of this Regulation in particular for infringements which are *not subject to administrative fines* pursuant to Article 83, and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.
2. Each Member State shall *notify* to the Commission the provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

81-85

Member States can determine rules on additional fines that aren't already defined in the #gdpr.

CHAPTER IX PROVISIONS RELATING TO SPECIFIC PROCESSING SITUATIONS

Article 85 Processing and freedom of expression and information

Recital: 153

€0 - €20m or up to 4%

1. Member States shall by law *reconcile* the right to the protection of personal data pursuant to this Regulation with the right to *freedom of expression and information*, including processing for *journalistic purposes* and the purposes of *academic*, *artistic* or *literary expression*.
2. For processing carried out for *journalistic purposes* or the purpose of academic artistic or literary expression, Member States shall provide for *exemptions* or *derogations* from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations) if they are *necessary* to *reconcile* the right to the protection of personal data with the freedom of expression and information.
3. Each Member State shall *notify* to the Commission the provisions of its law which it has adopted pursuant to paragraph 2 and, without delay, any subsequent amendment law or amendment affecting them.

Member States can make exceptions to #gdpr rules for journalistic, academic, artistic or literary purposes.

Article 86 Processing and public access to official documents

Recital: 154

€0 - €20m or up to 4%

Personal data in *official documents* held by a *public authority* or a *public body* or a *private body* for the performance of a task carried out in the *public interest* may be *disclosed* by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.

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Personal data in official government documents may be made public in compliance with local laws. #gdpr

Article 87 Processing of the national identification number

No recitals

€0 - €20m or up to 4%

Member States may *further* determine the specific conditions for the processing of a *national identification number* or any other identifier of general application. In that case the national identification number or any other identifier of general application shall be used only under appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation.

Member States can determine their own rules for the use of national identification numbers. #gdpr

Article 88 Processing in the context of employment

Recital: 155

0 - €20m or up to 4%

1. Member States *may*, by law or by collective agreements, *provide* for *more* specific rules to ensure the protection of the rights and freedoms in respect of the processing of *employees'* personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.
2. Those rules shall include suitable and *specific measures* to *safeguard* the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.
3. Each Member State shall *notify* to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

86-90

Member States can adopt national rules for protecting privacy in employment matters e.g. recruitment, employment contracts. #gdpr

Article 89 Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

Recitals: 156-163

€0 - €20m or up to 4%

1. Processing for *archiving* purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation. Those measures may include *pseudonymisation* provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.
2. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for *derogations* from the rights referred to in Articles 15, 16, 18 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or *seriously impair* the achievement of the specific purposes, and such derogations are necessary for the *fulfilment* of those purposes.
3. Where personal data are processed for archiving purposes in the public interest, Union or Member State law may provide for *derogations* from the rights referred to in Articles 15, 16, 18, 19, 20 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or *seriously impair* the achievement of the specific purposes, and such derogations are necessary for the *fulfilment* of those purposes.
4. Where processing referred to in paragraphs 2 and 3 serves at the same time another purpose, the derogations shall apply only to processing for the purposes referred to in those paragraphs.

The archiving and processing of data for scientific or historical research or for statistical purposes require sufficient safeguards e.g. security, pseudonymisation. #gdpr

86-90

Article 90 Obligations of secrecy

Recital: 164

€0 - €20m or up to 4%

1. Member States may adopt specific rules to set out the powers of the supervisory authorities laid down

in points (e) and (f) of Article 58(1) in relation to controllers or processors that are subject, under Union or Member State law or rules established by national competent bodies, to an *obligation* of *professional secrecy* or other equivalent obligations of secrecy where this is necessary and proportionate to *reconcile* the right of the protection of personal data with the obligation of secrecy. Those rules shall apply only with regard to personal data which the controller or processor has received as a result of or has obtained in an activity covered by that obligation of secrecy.

2. Each Member State shall *notify* to the Commission the rules adopted pursuant to paragraph 1, by 25 May 2018 and, without delay, any subsequent amendment affecting them.

Member States can determine that the authority may not request all information in case of professional secrecy. #gdpr

Article 91 Existing data protection rules of churches and religious associations

Recital: 165

€0 - €20m or up to 4%

1. Where in a Member State, *churches* and *religious associations* or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of natural persons with regard to processing, such rules may continue to apply, provided that they are brought *into line* with this Regulation.
2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 of this Article shall be subject to the supervision of an *independent supervisory authority*, which may be specific, provided that it *fulfils* the *conditions* laid down in Chapter VI of this Regulation.

Churches can sometimes continue to apply comprehensive privacy rules provided they are in line with the #gdpr

CHAPTER X DELEGATED ACTS AND IMPLEMENTING ACTS

86-90

Article 92 Exercise of the delegation

Recitals: 166-170

1. The power to adopt *delegated acts* is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 12(8) and Article 43(8) shall be *conferred* on the Commission for an indeterminate period of time from 24 May 2016.
3. The delegation of power referred to in Article 12(8) and Article 43(8) may be *revoked* at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 12(8) and Article 43(8) shall enter into force *only* if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

The European Commission can delegate its power e.g. regarding icons and certification. The European Parliament or Council can revoke delegated powers. #gdpr

Article 93 Committee procedure

No recitals

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

A committee assists the European Commission. #gdpr

91-95

CHAPTER XI FINAL PROVISIONS

Article 94 Repeal of Directive 95/46/EC

Recitals: 171, 172

1. Directive 95/46/EC is *repealed* with *effect* from 25 May 2018.
2. *References* to the repealed Directive shall be *construed* as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be *construed* as *references* to the European Data Protection Board established by this Regulation.

As soon as the #gdpr comes into force, the old European privacy directive from 1995 will be repealed.

Article 95 Relationship with Directive 2002/58/EC

Recital: 173

This Regulation shall *not impose additional obligations* on natural or legal persons in relation to processing in connection with the provision of publicly available *electronic communications services* in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.

The #gdpr imposes no new obligations for topics covered by the ePrivacy Directive.

Article 96 Relationship with previously concluded Agreements

Recital: 171

International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to 24 May 2016, and which comply with Union law as applicable prior to that date, shall *remain in force until* amended, replaced or revoked.

Existing international agreements on transfers to third countries remain in place until they are amended, replaced or revoked. #gdpr

Article 97 Commission reports

No recitals

1. By 25 May 2020 and every four years thereafter, the Commission shall submit a *report* on the *evaluation* and *review* of this Regulation to the European Parliament and to the Council. The reports shall be made public.
2. In the context of the evaluations and reviews referred to in paragraph 1, the Commission shall *examine*, in particular, the *application* and *functioning* of:
   a) Chapter V on the *transfer* of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to Article 45(3) of this Regulation and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC;
   b) Chapter VII on *cooperation* and *consistency*.
3. For the purpose of paragraph 1, the Commission may request information from Member States and supervisory authorities.
4. In carrying out the evaluations and reviews referred to in paragraphs 1 and 2, the Commission shall take into account the positions and findings of the European Parliament, of the Council, and of other relevant bodies or sources.
5. The Commission shall, if necessary, submit *appropriate proposals* to amend this Regulation, in particular taking into account of *developments* in *information technology* and in the light of the state of progress in the information society.

The European Commission will review the #gdpr every 4 years. Its reports will include third-country transfers, authorities' cooperation and consistency in application.

Article 98 Review of other Union legal acts on data protection

No recitals

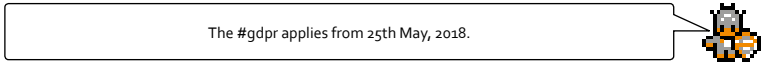
The Commission shall, if appropriate, submit legislative proposals with a view to *amending* other Union legal acts on the protection of personal data, in order to ensure *uniform* and *consistent* protection of natural persons with regard to processing. This shall in particular concern the rules relating to the protection of natural persons with regard to processing by Union institutions, bodies, offices and agencies and on the free movement of such data.

The European Commission can submit proposals to ensure consistency in privacy rules. #gdpr

Article 99 Entry into force and application

No recitals

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from *25 May 2018*.



GDPR FACTSHEET

Personal Data

"Is processing personal data allowed?'

Lawfulness of processing personal data Lawful when unambiguous consent is given; necessary for the performance of a contract; performing a legal obligation; protecting vital interests; carrying out tasks in the public interest or for the purpose of a legitimate interest. Legitimate interest no longer applies to public authorities.	6
Principles applicable to processing of personal data Lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, accountability.	5
Demonstrable consent for certain purposes (if consent is used as the legitimate ground for the processing) Organisations must be able to demonstrate they have consent to process personal data. Consent can be withdrawn at any time. Provisions are considered non-binding in case of non-compliance with the rules. Written consent requests must be clear and separated from other matters.	7
Transfer of personal data Transfer outside the EU is only permitted under certain conditions. Multi-nationals can draft binding corporate rules that need approval from a competent supervisory authority.	45-47
Special categories of personal data (such as ethnicity, political opinions, religious beliefs, health, sexual orientation) The processing of special categories of personal data is prohibited or subject to strict conditions.	9
Additional protection for children under 16 Processing of personal information from children under 16 is only allowed with consent given or authorised by the holder of parental responsibility over the child. Organisations must make reasonable efforts to verify the consent, taking into consideration available technology.	8
Profiling Profiling with legal effects is only permitted under certain circumstances. If profiling significantly affects the data subject, he/she has the right not to be subject to such a decision if it is solely based on automated processing.	22
Exception for certain purposes The Regulation does not apply to archiving for purposes in the public interest and scientific, historical or statistical purposes.	5/89

Maintenance

'How to conduct privacy maintenance?'

Implementation and documentation Organisations must, amongst others, analyse the processing carried out by themselves or their suppliers, the kinds of data subjects, the purposes of the processing and security measures taken. In some cases, organisations must maintain a record of processing activities.	5/24/ 30
Check, review and conclude Data Processing Agreements Processing of personal data is governed by a contract (data processing agreements) between controller and processor.	28/29
Risk analysis and DPIA (DPIA/compliance review) A risk analysis must be performed for existing and new services. For high risk services or systems a Data Protection Impact Assessment (DPIA) must be conducted.	24/35
Information security Organisations must take appropriate technical and organisational measures to protect personal data.	24/32/ 35
Managing consent and rights of data subjects Systems and processes will need to be designed and managed to meet the rights of data subjects, such as the right of access, rectification and the "right to be forgotten".	7/15-19
Data portability Data subjects have the right to obtain a copy of their personal data in an electronic and usable format.	20
Policies and the implementation of technical and organisational measures Organisations should develop policies and must be able to demonstrate the use of appropriate technical and organisational measures in order to show compliance and transparent processing of personal data.	24/32
Retention Limit the storage period and delete or archive (if permitted) data in a timely manner.	5/89

Organisation

'How to embed privacy in your organisation?'

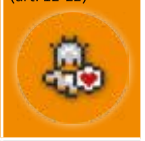
Data Protection Officer In some cases, organisations need to appoint a data protection officer, for example when public bodies or authorities carry out the processing, when processing is a core activity or when large amounts of special personal data are processed.	37-39
Rights of data subjects (access, correction, deletion, compensation, objection) Implement processes for exercising rights. Data subjects may request information about processing purposes, categories of data, recipients, and retention, and they can request rectification or erasure. Data subjects have the right to file a complaint and can object to automated decision-making (profiling).	15-18/ 21/22/ 24
Data breach notifications Implement procedures for data breach notifications.	33/34
Trained staff and a privacy aware organisation To minimise risks, organisations and their employees should be aware of the key elements of the legislation and act accordingly.	5/24/ 28
Relevance of privacy for (developing) products and services (data protection by design/default) Include privacy in the development of new products and services.	25
Certification Organisations are encouraged to become certified for privacy (to demonstrate compliance). A certificate may be issued by certification bodies accredited by the supervisory authority and/or the national accreditation body.	42/43/ 83
Supervision The supervisory authority in the country of the main establishment of the organisation will be responsible for supervision.	56/60

Communication

'How to communicate about privacy?'

Clear and comprehensible communication regarding data Information and communication about the data processing, the rights of data subjects and the privacy statement should be understandable and should be drafted in plain (common) language, especially when it is directed at children.	7/8/14/ 15/21
Data breach notification to supervisory authority and stakeholders Data breaches must be reported to the supervisory authority within 72 hours and in some cases require immediate notification to the data subjects concerned. If the notification to the supervisory authority is not made within 72 hours, reasons for the delay must be indicated.	33/34
Contact details of Data Protection Officers (DPOs) Contact details of the DPO must be published and sent to the competent supervisory authority. Stakeholders must be able to contact the DPO in order to exercise their rights.	37
Communication with the supervisor The supervisor may request documents and information and has the power to gain access to all personal data and the locations where they are stored.	31/58
Objection to profiling Data subjects must be informed explicitly about their right to object to profiling.	22
Openness about record of processing activities On request, the record must be made available to the supervisory authority. Optionally, the record of processing activities or an overview of processing activities can be made public. This enhances transparency and promotes accountability.	30
Information to obtain valid consent If a processing activity is based on consent, clear and comprehensible information regarding the purpose needs to be provided beforehand.	6

Version 2.0 November 2017. The numbers represent articles of the General Data Protection Regulation (Regulation 2016/679 (GDPR)). Document has been compiled with care, but errors are possible. No rights can be derived from this publication. The most recent version of the GDPR Factsheet is available on www.privacycompany.eu.

Governance: Consists of privacy awareness within the organisation, internal policies, accountability measures, transparency to data subjects, cooperation with third parties and data processors (including data processing agreements)								
Subjects / **Actions**	**Anonymisation** 	**1. Data minimisation** (art. 5(1)c) 	**2. Pseudo-nymisation** (art. 4(5)) 	**3. Encryption** (art. 6(4)e, 32(1)a) 	**4. Access control** (art. 32(1), 5(1)f) 	**5. Data protection by default** (art. 25(2)) 	**6. Deletion / retention terms** (art. 5(1)e) 	**7. Facilitate rights of data subject** (art. 12-22) 
Technical	Anonymise and aggregate (e.g. differential privacy)	Gather only data that is strictly necessary. Delete unnecessary data immediately.	Removal of all directly identifying elements, hashing, polymorphic pseudo-id.	e.g. public key encryption, disk encryption.	Digital data vault, physical access controls, logical access controls, authentication and authorisation.	Privacy friendly settings as default setting, transparent user interface, permission management.	Automated deletion, 'flagging' of data after end of retention term, sticky policies, data fading.	Privacy dashboard, communication / support. (art. 5(1)a)
Supportive Documents	No extra measures needed, no personal data involved	Description of purpose of data processing and list of necessary data.	Policy for separation of identifying data and other data or agreements.	Information security standards (art. 32(1)) and policies.	Authorisation matrix and logging, based on need to know and need to access.	Registration opt-in / opt-out and permissions.	Policy and overview of retention terms, management of e-waste (old documents and devices).	Privacy statement, policy for access requests, correction and deletion of personal data.
Alternative	If data is not anonymised follow the scheme	When possible anonymise / aggregate part of the data set, data fading.	Other security measures.	Other security measures (e.g. stand-alone server).	Access logs, with checks.	No alternative, just comply.	Anonymise and aggregate (archive if permitted).	No alternative, legal obligation.
Privacy Audit								
A data protection impact assessment can test the requirements and illustrate what actions need to be taken (art. 35 GDPR).								

Why this framework?

In the General Data Protection Regulation, Data Protection by Design is an explicit requirement for the processing of personal data (art. 25 GDPR). Data Protection by Design means that organisations pay attention to the protection of personal data when developing (new) products and services. The implementation of privacy enhancing measures in the early stages of development saves costs because it prevents more expensive interventions later on and it facilitates compliance earlier on. In practice, however, it is often unclear how compliance with the requirement of Data Protection by Design can be accomplished.

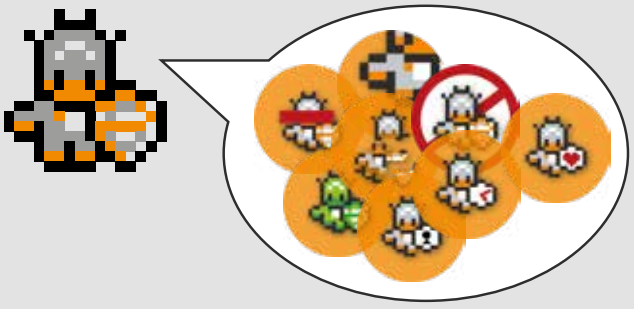
How to use this framework?

This framework provides a practical guide to Data Protection by Design based on several requirements that are spread over the General Data Protection Regulation.

Whenever possible, anonymised data should be used. If that is not an option, the other columns of the framework can be followed. In all cases there will be a technical/organisational component with supporting documentation or organisational measures. By using the framework and administering which aspects have been taken into account, an overview of the way your organisation complies with Data Protection by Design emerges.

Since there might be situations where not all technical aspects can be met, some alternative safeguards are suggested.

Let Captain Privacy guide you!



Incorporate this framework into your organisation

The framework can be used within an organisation as a part of the overall privacy and data governance. To safeguard compliance we suggest regular audits based on the framework. In addition, a data protection impact assessment can help make clear which measures are needed when new products or services are developed or new personal data processing activities are started.

INDEX

This pocket guide presents European privacy regulation for privacy professionals, with its main focus on the General Data Protection Regulation (GDPR). It introduces European courts, includes the recitals, provides factsheets and has a convenient index. Captain Privacy explains the seven biggest misunderstandings of the GDPR, summarises each article in a tweet, highlights important sections and refers to fines. As such, Captain Privacy makes the GDPR easily accessible without overlooking its details.

This pocket guide is an updated, international version of our 2016 edition. That edition was widely used by privacy professionals, who have praised it for its convenience as reference material for day-to-day work. This updated version is indispensable for privacy professionals and those who are interested in the field.

About Privacy Company

We have 100 years of privacy experience in our team. With consultancy, training programmes, the software Privacy Nexus and Data Protection Officer services, we help your organisation with a pragmatic approach to GDPR compliance. If you want to find out more, just let us know. Our team would love to hear from you!

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