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**NOTE**

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From: Presidency  
To: Delegations

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)  
- The one-stop-shop mechanism

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Further to the DAPIX meeting of 20-21 November 2014, delegations find attached the revised text of the relevant articles of Chapters VI, VII and VIII.

16a) While this Regulation applies also 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 its decision-making. Supervision of such data processing operations may be entrusted to specific bodies within the judicial system of the Member State, which should in particular control compliance with the rules of this Regulation, promote the awareness of the judiciary of their obligations under this Regulation and deal with complaints in relation to such processing.

(...)

95a) 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, processing affecting data subjects on its territory or processing carried out by a controller not established in the European Union when targeting data subjects residing in its territory. This should include dealing with complaints lodged by a data subject, conducting investigations on the application of the Regulation, promoting public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data.

96) 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, this Regulation should oblige and empower the supervisory authorities to co-operate with each other and the Commission, without the need for any agreement between Member States on the provision of mutual assistance or on such cooperation.

96a) Where the processing of personal data *takes place* in the context of the activities of an establishment of a controller or 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 affect substantially 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. Within its tasks to issue guidelines on any question covering the application of this Regulation, the European Data Protection Board may 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.

(...)

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 and bodies of a Member State. 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 body is established.

96b) The lead authority should be competent to (...) **give legal effect to** measures applying the powers conferred on it in accordance with the provisions of 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.

96c) The decision (...) should be taken jointly **by the lead supervisory authority and (...) the other 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 the 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.

100) 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, particularly in cases of complaints from individuals, and to bring infringements of this Regulation to the attention of the judicial authorities and/or engage in legal proceedings. 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 conformity with appropriate procedural safeguards set out in Union law and national 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 individual 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 national 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 of a person 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 national procedural law.

100a)(...)

101) (...)<sup>1</sup>.

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<sup>1</sup> Moved to recital 111.

101) Where the supervisory authority to which the complaint has been lodged is not the lead supervisory authority, the lead supervisory authority should closely co-operate with the supervisory authority to which the complaint has been lodged according to the provisions on co-operation 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 to 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.

101a) The supervisory authority receiving a complaint or detecting or being informed otherwise of situations that entail possible infringements of the Regulation should seek an amicable settlement and, if this proves unsuccessful, exercise its full range of powers in cases 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 one single 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. **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; or to 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 that has to be assessed taking into account relevant legal obligations under national law.**

102) 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 (...) **individuals in particular in the educational context.**

- 103) 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. Where a supervisory authority requesting mutual assistance, in the case of no response of the requested supervisory authority within one month of receiving the request, adopts a provisional measure, such provisional measure should be duly justified and only of a temporary nature.
- 104) Each supervisory authority should have the right to participate in joint operations between supervisory authorities. The requested supervisory authority should be obliged to respond to the request in a defined time period.

104a)(...)<sup>2</sup>

- 105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities themselves and the Commission should be established. This 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 dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

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<sup>2</sup> Merged with recital 110.

- 106) In application of the consistency mechanism, the European Data Protection 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 European Data Protection Board should also be empowered to settle disputes between supervisory authorities. For that purposes it should issue, with a two-third majority of its members, binding positions in clearly defined 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, notably whether there is an infringement of this Regulation or not (...).
- 107) (...)
- 108) 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. Therefore, a supervisory authority should be able to adopt provisional measures with a specified period of validity when applying the consistency mechanism.
- 109) The application of this 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.

- 110) In order to promote the consistent application of this Regulation, the European Data Protection Board should be set up as an independent body of the Union. To fulfil its objectives, the European Data Protection Board should have legal personality. The European Data Protection Board should be represented by its Chairperson. 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 a head of a supervisory authority of each Member State or his or her representative and of the European Data Protection Supervisor. The Commission should participate in its activities without voting rights. The European Data Protection 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 co-operation of the supervisory authorities throughout the Union. The European Data Protection Board should act independently when exercising its tasks
- 111) Every data subject should have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence , and have the right to an effective judicial remedy in accordance with Article 47 of the Charter of Fundamental Rights 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. Each supervisory authority to which a complaint has been lodged should deal with the complaint and should investigate the matter to the extent appropriate. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can be completed also electronically, without excluding other means of communication.

*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<sup>3</sup>.*

**Article 4: definition ‘supervisory authority concerned’**

(19a) ‘supervisory authority concerned’ means a supervisory authority which is concerned by the processing, because the controller or processor is established on the territory of the Member State of that supervisory authority or because data subjects residing in this Member State are **or likely to be** substantially affected by the processing.

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<sup>3</sup> Moved from Recital 101.

## SECTION 2

### COMPETENCE, TASKS AND POWERS

*Article 51*

*Competence*<sup>4 5</sup>

1. Each supervisory authority shall (...) perform the tasks and to exercise the powers conferred on it in accordance with this Regulation (...) <sup>6</sup> on the territory of its own Member State.

**Each Supervisory Authority shall be competent for processing taking place in the context of the activities of an establishment of a controller or a processor on the territory of its Member State or affecting data subjects on the territory of its Member State.**

a) (...)

b) (.....)

c) (...)

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- <sup>4</sup> COM reservation. Scrutiny reservation on the one-stop-shop mechanism by DE, DK, EE, FR, MT, NL, PT, RO and UK. Some delegations (BG, CY, DE, GR, NL and LU) supported one-stop-shop principle, but had many questions of understanding as to its practical implementation. Other delegations (BE, CZ, ES, FR, HU, IT, AT, PT, RO and SI) had a more critical attitude and entered a reservation. Several referred to the problem of proximity. One of the main questions was whether the allocation of competence to the DPA of the main establishment was exclusive and whether it also implied a rule of applicable law (DE, ES). In this regard the issue of divergent MS case law was mentioned. A practical question was that of the language regime which would govern the co-operation between the DPAs and the communication with the controllers and the data protection. All delegations seemed to agree that at any rate the establishment of such a rule could not lead to the exercise of
- <sup>5</sup> NL thought all jurisdiction rules should be set out in this article, covering both domestic and cross-border cases and private as well as public controllers (and processors). At the request of several delegations, COM indicated that the main-establishment rule under this paragraph would not apply to controllers established outside the EU. In the view of the Commission, this constituted an incentive for non-EU controllers to establish themselves in the EU in order to avail themselves of the benefit of the main establishment rule.
- <sup>6</sup> DK, DE and EE queried whether the decisions of this DPA would also be binding on controllers outside that MS. Constitutional reservation by DK.

- 1a. (...)
- 1b. (...)
- 1c. (...)
- 2. (...)
- 2a. (...)
- 2b. (...)
- 3. Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity<sup>7</sup>. (...).

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<sup>7</sup> FR, HU, NL, RO and UK scrutiny reservation. DE suggested adding "other matters assigned to courts for independent performance. The same shall apply insofar as judicially independent processing has been ordered, approved or declared admissible", as the derogation must apply whenever courts' work falls within the scope of their institutional independence, which is not only the case in the core area of judicial activity but also in areas where courts are assigned tasks specifically for independent performance.

Article 51a

*Competence of the lead supervisory authority*

1. Without prejudice to Article 51 and to the competences of supervisory authorities concerned, where the processing of personal data takes place in the context of the activities of an establishment of a controller or processor in the Union and the controller or processor is established in more than one Member State, or where the processing of personal data takes place in the context of the activities of a single establishment of a controller or processor in the Union and the processing substantially affects or is likely to affect substantially data subjects in more than one Member State, the supervisory authority for the main establishment or for the single establishment of the controller or the processor shall act as lead supervisory authority (...) in accordance with the cooperation mechanism and the terms and procedure foreseen in Article 54a.
  - 1a. (...) <sup>8</sup>
  2. (...)
  - 2a. **Each supervisory authority shall be competent to deal with a complaint lodged in accordance with Article 73(1), or to deal with a possible infringement of this Regulation detected by or otherwise brought to its attention, including for seeking an amicable settlement of the complaint or infringement case and by exercising all the powers conferred on it pursuant to Article 53. That supervisory authority concerned shall inform the lead supervisory authority thereof. If the subject matter of the case concerns processing activities in other Member States or processing that substantially affects or is likely to substantially affect data subjects in other Member States, the cooperation mechanism and the terms and procedure foreseen in Article 54a shall apply.**
3. (...)

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<sup>8</sup> Moved to Article 51(1a).

4. This article shall not apply where the processing is carried out by public authorities and bodies of a Member State [or to private bodies acting on the basis of a legal obligation to discharge functions in the public interest].

*Article 51b*

Identification of the supervisory authority competent for the main establishment

1. Any controller or processor which carries out processing of personal data in the context of the activities of an establishment in the Union and is established in more than one Member State [shall/may] indicate **its main establishment** to the supervisory **authority** where its main establishment is located (...). **That supervisory authority shall inform the European Data Protection Board of this indication.**
- 1a. When indicating its main establishment pursuant to paragraph 1, the controller or processor shall list all its establishments in the Union for which the decisions on the purposes and means of processing are taken at the main establishment and shall, on the request of **the supervisory authority concerned**, provide further information in relation to the existence of the main establishment in the place specified. The controller or processor shall inform the supervisory **authority** on any changes of the information provided.
- 1b. **Where necessary**, the supervisory authority of the main establishment indicated as per paragraph 1 shall verify the existence of the main establishment at the place specified and notify the outcome of its verification to the controller or processor, the other supervisory authorities concerned and the European Data Protection Board.
2. Where there are conflicting views between the supervisory authorities concerned on which supervisory authority is (...) that for the main establishment, any of the supervisory authorities concerned may refer the matter to the European Data Protection Board. The European Data Protection Board shall settle the dispute on the identification of the supervisory authority for the main establishment in accordance with the procedure provided for in Article 58a.

*[Article 51c*  
*One-stop shop register*<sup>9</sup>

The European Data Protection Board shall keep a public register of the verified information referred to in paragraph (...), 1a of Article 51b for consultation, which shall be electronically accessible to anyone free of charge.]

*Article 52*

Tasks<sup>10</sup>

1. Without prejudice to other tasks set out under this Regulation<sup>11</sup>, each supervisory authority shall on its territory<sup>12</sup>:
  - (a) monitor and enforce the application of this Regulation;
  - (aa) promote public awareness of and education on the risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention;
  - (ab) advise, in accordance with national law, the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data<sup>13</sup>;

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<sup>9</sup> ES remarked that this would be very costly

<sup>10</sup> DE, IT, AT, PT and SE scrutiny reservation. UK thinks the term 'functions' rather than 'duties' should be used.

<sup>11</sup> New text as paragraphs (f) to (i) have been deleted as these duties were already laid down elsewhere in the Regulation.

<sup>12</sup> A recital should be drafted in order to clarify that Member States may allocate other tasks to DPAs. DE thought it preferable to use the words 'at least' in the chapeau. See also new point (g) in paragraph 1.

<sup>13</sup> NL reservation.

- (ac) promote the awareness of controllers and processors of their obligations under this Regulation;
- (ad) upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end;
- (b) deal with complaints<sup>14</sup> lodged by a data subject, or body, organisation or association representing a data subject in accordance with Article 73<sup>15</sup>, and investigate, to the extent appropriate, the subject matter of the complaint and inform the data subject or the body, organisation or association of the progress and the outcome of the investigation within a reasonable period<sup>16</sup>, in particular if further investigation or coordination with another supervisory authority is necessary;
- (c) 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;
- (d) conduct investigations on the application of this Regulation (...), including on the basis of a information received from another supervisory or other public authority(...);
- (e) 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;

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<sup>14</sup> IT scrutiny reservation on the term complaint; UK thought the emphasis should be on complaint-resolution.

<sup>15</sup> BE suggested limiting this to the data subject itself.

<sup>16</sup> IT suggested fixing a 10-weeks period for dealing with the complaint.

- (f) adopt standard contractual clauses referred to in Article 26(2c);
- (fa) establish and make a list in relation to the requirement for data protection impact assessment pursuant to Article 33(2a);
- (g) give advice on the processing operations referred to in Article 34(3) (...) <sup>17</sup>;
- (ga) encourage the drawing up of codes of conduct pursuant to Article 38;
- (gb) promote the establishment of data protection certification mechanisms and of data protection seals and marks;
- (gc) where applicable, carry out a periodic review of certifications issued in accordance with Article 39(4);
- (gd) (...);
- (h) draft and publish the criteria for accreditation of a body for monitoring codes of conduct pursuant to Article 38a and of a certification body pursuant to Article 39a;
- (ha) conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 38a and of a certification body pursuant to Article 39a;
- (hb) authorise contractual clauses referred to in Article 42(2)(d);
- (i) approve binding corporate rules pursuant to Article 43;
- (j) contribute to the activities of the European Data Protection Board;
- (k) fulfil any other tasks related to the protection of personal data.

2. (...).

3. (...).

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<sup>17</sup> Deleted as it is already in Article 53(1c)(ab).

4. Each supervisory authority shall facilitate the submission of complaints referred to in point (b) of paragraph 1, by measures such as providing a complaint submission form which can be completed also electronically, without excluding other means of communication.
5. The performance of the tasks of each supervisory authority shall be free of charge for the data subject and for the data protection officer, if any.
6. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may refuse to act on the request<sup>18</sup>. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request<sup>19</sup>.

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<sup>18</sup> EE pointed out that under its constitution this required an act of parliament. NL and RO also thought this should be left to Member States.

<sup>19</sup> DE, NL and SE reservation: this could be left to general rules.

*Article 53*  
*Powers*<sup>20 21</sup>

1. Each Member State shall provide by law that its supervisory authority shall have at least<sup>22</sup> the following investigative powers:
- (a) to order the controller and the processor, and, where applicable, the controller's representative to provide any information it requires for the performance of its duties;
  - (aa) to carry out investigations in the form of data protection audits<sup>23</sup>;

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<sup>20</sup> DE, NL, RO, PT and SE scrutiny reservation; SE thought this list was too broad. Some Member States were uncertain (CZ, RO and UK) or opposed (DE, DK, and IE) to categorising the DPA powers according to their nature. DK has raised serious constitutional concerns -based on the understanding that a decision by a “lead authority” in one Member State would be directly binding for the concerned establishments in all Member States. There is no problem if there were to be no doubt that a decision by the “lead authority” should be directed towards the “main establishment” and should only be binding for this establishment. It would then be for the “main establishment” – e.g. through internal business/cooperation rules – to implement the decision in subsidiaries in other Member States. If it is the case that a decision by a “lead authority” in another Member State is not to be binding for e.g. an establishment in Denmark, Denmark will not have a constitutional problem with the one-stop-shop principle. In this case the principle would not entail the transfer of powers from Danish authorities to authorities in other Member States.

<sup>21</sup> Several Member States (DE, FR,~~SI~~) stated that it was unacceptable that the supervisory authority would be able to exercise these powers vis-à-vis public authorities. DE thought a distinction should be drawn between powers with regard to public and non-public bodies. Direct powers of instruction in respect of public bodies subject to supervisory and judicial control, which might therefore lead to conflicts, would be problematic for Germany. Moreover, consideration also needs to be given to the delimitation between this proposal and the proposal for a Directive on police and judicial affairs, which accords fewer powers to the supervisory authorities in some respects.

<sup>22</sup> Further to BG suggestion, supported by EE, IT, to make this an indicative list. RO argued in favour of the inclusion of an explicit reference to the power of DPAs to issue administrative orders regarding the uniform application of certain data protection rules. COM and ES scrutiny reservation on 'at least' in paragraphs 1 and 1a.

<sup>23</sup> CZ, IT, PL and SK scrutiny reservation. CZ and PL pleaded for a recital explaining that audit could be understood as inspection.

- (ab) to carry out a review on certifications issued pursuant to Article 39(4);
  - (b) (...)
  - (c) (...)
  - (d) to notify the controller or the processor of an alleged infringement of this Regulation<sup>24</sup> (...);
  - (da) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its duties;
  - (db) to obtain access to any premises of the controller and the processor , including to any data processing equipment and means, in conformity with Union law or Member State procedural law.
- 1a. (...).

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<sup>24</sup> BE suggested adding the power to oblige the controller to communicate the personal data breach to the data subject.

- 1b. Each Member State shall provide by law that its supervisory authority shall have the following corrective powers:
- (a) to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;
  - (b) to issue reprimands<sup>25</sup> to a controller or processor where processing operations have infringed provisions of this Regulation<sup>26</sup>;
  - (c) (...);
  - (ca) 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; in particular by ordering the rectification, restriction or erasure of data pursuant to Articles 16, 17 and 17a and the notification of such actions to recipients to whom the data have been disclosed pursuant to Articles 17(2a) and 17b;
  - (e) to impose a temporary or definitive limitation on processing;
  - (f) to order the suspension of data flows to a recipient in a third country or to an international organisation<sup>27</sup>;
  - (g) to impose an administrative fine pursuant to Articles 79 and 79a, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case.

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<sup>25</sup> PL and SK scrutiny reservation.

<sup>26</sup> PL scrutiny reservation on points (a) and (b).

<sup>27</sup> SK reservation.

- 1c. Each Member State shall provide by law that its supervisory authority shall have the following authorisation and advisory powers:
- (a) to advise the controller in accordance with the prior consultation procedure referred to in Article 34<sup>28</sup>,
  - (aa) to issue, on its own initiative or on request, opinions to the national parliament, the Member State government or, (...) in accordance with national law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data;
  - (ab) to authorise processing referred to in Article 34(7a);
  - (ac) to issue an opinion and adopt draft codes of conduct pursuant to Article 38(2);
  - (ad) to accredit certification bodies under the terms of Article 39a;
  - (ae) to issue certifications in accordance with Article 39(2a);**
  - (b) authorise standard data protection clauses referred to in point (c) of Article 42(2);
  - (c) authorise contractual clauses referred to in point (d) of Article 42(2);
  - (d) approve binding corporate rules pursuant to Article 43.
2. 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 of Fundamental Rights of the European Union.<sup>29</sup>

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<sup>28</sup> NL scrutiny reservation. This was placed in the wrong category.

<sup>29</sup> CY, ES, FR, IT and RO thought this could be put in a recital as these obligations were binding upon the Member States at any rate. COM could accept this.

3. 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<sup>30</sup>, in order to enforce the provisions of this Regulation<sup>31</sup>.
4. (...)
5. (...)

*Article 54*

***Activity Report***

Each supervisory authority shall draw up an annual report of its activities. The report shall be transmitted to the national Parliament, the government and other authorities as designated by national law. It shall be made available to the public, the European Commission and the European Data Protection Board.

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<sup>30</sup> DE, FR and RO reservation on proposed DPA power to engage in legal proceedings. UK scrutiny reservation. CZ reservation on the power to bring this to the attention of the judicial authorities.

<sup>31</sup> DE thought para. 3 and 4 should be deleted.

## CHAPTER VII<sup>32</sup>

### CO-OPERATION AND CONSISTENCY

#### SECTION 1

#### CO-OPERATION

##### *Article 54a*

##### *Cooperation between the lead supervisory authority and other supervisory authorities concerned*<sup>33</sup>

1. In the cases referred to in (...) Article 51a, (...) the lead supervisory authority (...) shall cooperate with the supervisory authorities concerned in accordance with this article (...) in an endeavour to reach consensus (...). (...)
- 1a. In the cases referred to in paragraph 1 of Article 51a, each supervisory authority concerned shall inform the lead supervisory authority and refer the matter to the lead supervisory authority **without delay** (...).
2. (...) The lead supervisory authority shall, without delay, further investigate the subject matter and communicate the relevant information on the matter to the supervisory authorities concerned and shall (...) submit a draft decision **including on whether there is an infringement of this Regulation or not and on the exercise of the powers referred to in paragraphs 1, 1b and 1c of Article 53** (...) to all supervisory authorities concerned for their opinion and take due account of the views of those supervisory authorities.

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<sup>32</sup> AT and FR scrutiny reservation on Chapter VII.

<sup>33</sup> BE, CZ, CY, DE, EE, FR, FI, IE, LU, RO, PT and NL scrutiny reservation. IE pointed out that in the case of personal data processed by social media or other internet platforms, all 28 MS DPAs would be 'concerned'. LU and NL doubted that one DPA concerned would be sufficient to trigger the consistency mechanisms. BE, FR, PL and LU expressed a preference for amicable settlements.

- a) (...)
  - b) (...)
  - c) (...)
- 2a. (...)
- 2b. The lead supervisory authority may request at any time **the** supervisory authorities **concerned** to provide mutual assistance pursuant to Article 55 and may conduct joint operations pursuant to Article 56, 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. Where any of the supervisory authorities concerned expresses a reasoned objection within a period of four weeks after having been consulted in accordance with paragraph 2 to the draft decision, the lead supervisory authority shall, if it does not follow the objection, submit the matter to the consistency mechanism referred to in Article 57. In such a case, the (...) European Data Protection Board shall settle the **dispute** and be binding on the lead supervisory authority and all the supervisory authorities concerned pursuant to point 2(a) of Article 57 and Article 58a. Where a supervisory authority concerned has not objected within this period, it is deemed to be in agreement with the draft decision.
4. Where no supervisory authority concerned has objected to the draft decision submitted by the lead supervisory authority within the period referred to in paragraph 3, the lead supervisory authority and the supervisory authorities concerned shall agree on a single decision jointly.
- 4a. The lead supervisory authority shall **give legal effect to the jointly agreed single decision** and notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State and inform the European Data Protection Board of the decision in question including a summary of the relevant facts and grounds.

- 4b. Where (...) jointly agreed **single decision** ~~upon~~ concerns a complaint and as far as it adversely affects the complainant, notably where the complaint is rejected, dismissed or granted only in part, (...) **the** supervisory authority that **has** received such complaint shall ~~adopt~~ **give legal effect to the jointly agreed** the single decision concerning that complaint and serve it on the complainant. The complainant shall be informed in any case of the outcome of the complaint pursuant to Article 73, paragraph 5.<sup>34</sup>
- 4c. After being notified of the decision of the lead supervisory authority pursuant to paragraph 4a, the controller or processor shall take the necessary measures to ensure compliance with the decision as regards the 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 then inform all the supervisory authorities concerned. The supervisory authorities concerned shall be bound by the single decision adopted jointly in the manner described above.
4. (.)
- 4a. (.)
- 4d. 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 61 shall apply.
5. The lead supervisory authority and the 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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<sup>34</sup> PL scrutiny reservation on paragraph 4b.

*Article 54b*

***Cooperation between the lead supervisory authority and the other supervisory authorities concerned in individual cases of possible non-compliance with the Regulation***

(...)

*Article 55*

*Mutual assistance*<sup>35</sup>

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 co-operation 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 the request of another supervisory authority without undue delay and no later than one month<sup>36</sup> after having received the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation (...).
3. The request for assistance shall contain all the necessary information<sup>37</sup>, including the purpose of the request and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.

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<sup>35</sup> DE, NL SE and UK scrutiny reservation. Several other delegations indicated that further clarity was required on this fundamental Article and the concept of mutual assistance, and announced text proposals: EE pleaded for much more detailed rules on mutual assistance, as is already the case in civil and criminal law. AT, supported by DE, declared that it had no specific problem with this Article, but that, in general, there was a need to follow developments in relation to CoE Convention No. 108.

<sup>36</sup> ES had suggested reducing it to 15 days. PT supported the suggestion of two weeks, with a possibility of adding more time, if needed. RO, on the other hand, found one month too short, and requested SE remarked that this timeline might be unrealistic in some cases. COM indicated that it was only a deadline for replying, but that paragraph 5 allowed longer periods for executing the assistance requested. UK requested a timetable, indicating deadlines.

<sup>37</sup> EE and SE scrutiny reservation.

4. <sup>38</sup>A supervisory authority to which a request for assistance is addressed may not refuse to comply with it unless:
- (a) it is not competent for the subject-matter of the request or for the measures it is requested to execute<sup>39</sup>; or
  - (b) compliance with the request would be incompatible with the provisions of this Regulation or with 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 or the measures taken in order to respond to the request. In cases of a refusal under paragraph 4, it shall explain its reasons for refusing the request<sup>40</sup>.
6. Supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means<sup>41</sup>, using a standardised format.
7. No fee shall be charged for any action taken following a request for mutual assistance. Supervisory authorities may agree with other supervisory authorities rules for indemnification by other supervisory authorities for specific expenditure arising from the provision of mutual assistance in exceptional circumstances<sup>42</sup>.

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<sup>38</sup> SE indicated further scrutiny was required as to whether other grounds of refusal were required. UK thought that this paragraph was drafted in much too absolute a fashion.

<sup>39</sup> Several delegations stressed the importance of establishing which is the competent DPA: DE, EE, SE, SI. NL and IT asked for further clarification.

<sup>40</sup> RO scrutiny reservation.

<sup>41</sup> PT (supported by RO) suggested adding "or other means if for some reason, electronic means are not available, and the communication is urgent".

<sup>42</sup> PT, UK and DE asked for clarification in relation to the resources needed / and estimate of costs.

8. Where a supervisory authority does not provide the information referred to in paragraph 5 within one month of receiving the request of another supervisory authority, the requesting supervisory authority may adopt a provisional measure<sup>43</sup> on the territory of its Member State in accordance with Article 51(1) and shall submit the matter to the European Data Protection Board (...) in accordance with the consistency mechanism referred to in Article 57<sup>44</sup>.
9. The supervisory authority shall specify the period of validity of such a provisional measure which shall not exceed three months<sup>45</sup>. The supervisory authority shall, without delay, communicate such a measure, together with its reasons for adopting it, to the European Data Protection Board (...) in accordance with the consistency mechanism referred to in Article 57.
10. The Commission may 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 European Data Protection Board, in particular the standardised format referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2)<sup>46</sup>.

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<sup>43</sup> LU requested more clarification with regard to what would happen if this provisional measure were not confirmed.

<sup>44</sup> EE, FR, RO, and UK reservation. DE scrutiny. UK did not find the drafting sufficiently clear, for instance regarding which authority would be competent and action on other Member States territory. COM specified that this Article would apply specifically in bilateral relations (whereas Article 56 would cover joint operations), the underlying philosophy being to avoid extraterritorial activity.

<sup>45</sup> DE asked for deletion of this deadline; the measure should be withdrawn if the conditions for imposing it were no longer fulfilled.

<sup>46</sup> DE, IT, EE, CZ and NL reservation. EE questioned whether implementing acts were necessary for this purpose. ES reminded about its proposal for an Article 55a.

Article 56

*Joint operations of supervisory authorities*<sup>47</sup>

1. The supervisory authorities may, where appropriate, conduct joint operations, including joint investigations and joint enforcement measures in which members or staff from other Member States' supervisory authorities are involved.
2. In cases where the controller or processor has establishments in several Member States or where [a significant number of <sup>48</sup>] 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 the joint operations, as appropriate. The competent supervisory<sup>49</sup> authority shall invite the supervisory authority of each of those Member States to take part in the joint operations concerned and respond without delay to the request of a supervisory authority to participate<sup>50</sup>.

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<sup>47</sup> IT requested a specification in this Article that this was also about multilateral cooperation. FR asked for a clearer distinction between Articles 55 and 56. DE, EE, PT and UK scrutiny reservation. Several delegations (DE, LV, NL, SE, IT, UK) supported the idea of joint operations, but thought more details needed to be clarified. DE and EE referred to a criminal law model of a joint investigation team. LU indicated it was not convinced of the added value of joint investigations. UK requested to make sure that these mechanisms would work in practice and drew the attention to the fact that paragraphs 1 and 3 were discretionary, whereas paragraph 2 was binding, and that this was confusing and potentially contradictory.

<sup>48</sup> COM reservation; more criteria should be added. IT, supported by FR, BE and CZ suggested stressing the multilateral aspect by adding text.

<sup>49</sup> LU asked for a clarification of who would be the lead authority. UK stated that it seemed like a mix of Art. 51(1) and 51(2) competences.

<sup>50</sup> SE entered a favourable scrutiny reservation on this paragraph.

3. A supervisory authority may, in compliance with its own 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 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 host supervisory authority's national law. (...)<sup>51</sup>
- 3a. Where, in accordance with paragraph 1, staff of a seconding supervisory authority are operating in another Member State, the Member State of the host supervisory authority shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
- 3b. 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 the latter in full any sums it has paid to the (...) persons entitled on their behalf.
- 3c. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3b, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement of damages [it has sustained] from another Member State<sup>52</sup>.
4. (...)

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<sup>51</sup> DE, LU, PT and COM scrutiny reservation on the deletion of this last phrase.

<sup>52</sup> Inspired by Article 3 of the Council Framework Decision of 13 June 2002 on joint investigation teams. UK reservation on paras. 3a, 3b and 3c.

5. <sup>53</sup>Where a joint operation is intended and a supervisory authority does not comply within one month with the obligation laid down in the second sentence of paragraph 2, the other supervisory authorities may adopt a provisional measure on the territory of its Member State in accordance with Article 51(1).
6. The supervisory authority shall specify the period of validity of a provisional measure referred to in paragraph 5, which shall not exceed three months. The supervisory authority shall, without delay, communicate such a measure, together with its reasons for adopting it, to the European Data Protection Board and to the Commission in accordance with the consistency mechanism referred to in Article 57.

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<sup>53</sup> NL asked whether the measures of paragraphs 5 and 6 were really necessary. EE suggested a merger of the two paragraphs.

**SECTION 2**  
**CONSISTENCY<sup>54</sup>**

*Article 57*

*Consistency mechanism<sup>55</sup>*

1. For the purpose set out in Article 46(1a), the supervisory authorities shall co-operate with each other through the consistency mechanism as set out in this section<sup>56</sup>.
  - 1a. (...)
  - 1b. (...)
2. The European Data Protection Board shall (...) issue an opinion whenever a competent supervisory authority intends to adopt any of the measures below (...). To that end, the competent supervisory authority shall communicate the draft measure to the European Data Protection Board, when the measure:
  - (a) (...);
  - (b) (...);
  - (c) aims at adopting a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 33(2b); or

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<sup>54</sup> BE, IT, SK and SI scrutiny reservation. BE reservation on the time required for a consistency mechanism procedure. DE parliamentary reservation and BE and UK reservation on the role of COM in the consistency mechanism.

<sup>55</sup> EE, FI, LU, NL and UK scrutiny reservation.

<sup>56</sup> CZ, DE, ES and RO thought that supervisory authorities of third countries for which there is an adequacy decision should be involved in the consistency mechanism; if third countries participated in the consistency mechanism, they would be bound by uniform implementation and interpretation.

- (ca) concerns a matter pursuant to Article 38(2b) whether a draft code of conduct or an amendment or extension to a code of conduct is in compliance with this Regulation;  
or
- (cb) aims to approve the criteria for accreditation of a body pursuant to paragraph 3 of Article 38a or a certification body pursuant to paragraph 2a of Article 39 or paragraph 3 of Article 39a;
- (d) aims to determine standard data protection clauses referred to in point (c) of Article 42(2); or
- (e) aims to authorise contractual clauses referred to in point (d) of Article 42(2); or
- (f) aims to approve binding corporate rules within the meaning of Article 43.

2a. The European Data Protection Board shall **settle a dispute between supervisory authorities** in the following cases:

- a) Where, in a case referred to in paragraph 3 of Article 54a(...), a supervisory authority concerned (...) expresses a reasoned objection to a draft measure **notably whether there is an infringement of this Regulation or not.** In that case, the lead supervisory authority shall communicate the matter to the European Data Protection Board in order for the Board to definitively settle the conflicting views on the draft measure;
- b) Where, in a case referred to in paragraph 2 of Article 51b, there are conflicting views on which of the supervisory authorities concerned is competent for the main establishment. In that case, any of the supervisory authorities concerned may communicate the matter to the European Data Protection Board (...);

c) Where a competent supervisory authority does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56. In that case, any supervisory authority concerned<sup>57</sup>, the lead supervisory authority or the Commission may communicate such matter to the European Data Protection Board<sup>58</sup>;

d) Where a competent supervisory authority does not request the opinion of the European Data Protection Board in the cases mentioned in paragraph 2 of this Article, or does not intend to follow the opinion of the European Data Protection Board issued as per Article 58. In that case, any supervisory authority concerned, the lead supervisory authority or the Commission may communicate the matter to the European Data Protection Board.

2b. The lead supervisory authority shall inform the European Data Protection Board within three weeks of any measure adopted pursuant to Article 54a(4a) and also provide a summary of the facts and grounds that made the taking of such measure necessary.

2c. Any supervisory authority (...), the Chair of the European Data Protection 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 European Data Protection Board with a view to obtaining an opinion.

4. (...)

5. Supervisory authorities and the Commission shall electronically communicate to the European Data Protection Board, using a standardised format any relevant information, including as the case may be a summary of the facts, the draft measure, the grounds which make the enactment of such measure necessary, and the views of other supervisory authorities concerned.

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<sup>57</sup> BE, IT, SE, SI, SK and PL thought the scope of this paragraph should be limited so as to limit the number of cases.

<sup>58</sup> LU proposed restricting this to cases where the coordination mechanism implemented by the competent authority did not allow for a solution to be reached; ES referred to cases where the other authorities did not agree with the proposal of the competent(/lead) authority.

6. The chair of the European Data Protection Board shall without undue delay electronically inform the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it using a standardised format. The secretariat of the European Data Protection Board shall, where necessary, provide translations of relevant information.

*Article 58*

*Opinion by the European Data Protection Board<sup>59</sup>*

1. (...)
2. (...)
3. (...)
4. (...)
5. (...)
6. (...)
- 6a. (...)
7. In the cases referred to in paragraphs 2 and 2c of Article 57, the European Data Protection Board shall issue an opinion on the subject- matter submitted to it provided it has not already issued an opinion on the same matter<sup>60</sup>. This opinion shall be adopted within one month by simple majority of the members of the European Data Protection Board. This period may be extended by a further month, taking into account the complexity of the subject matter. [Regarding the draft decision circulated to the members of the Board in accordance with paragraph 6 of Article 57, a member which has not objected within the period indicated by the Chair, shall be deemed to be in agreement with the draft decision.]

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<sup>59</sup> NL and UK scrutiny reservation.

<sup>60</sup> ES suggested keeping the possibility for one DPA requesting an opinion from the EDPB.

- 7a. Within the period referred to in paragraph 7 the competent supervisory authority shall not adopt its draft measure as per paragraph 2 of Article 57.
- 7b. The chair of the European Data Protection Board shall inform, without undue delay, the supervisory authority referred to, as the case may be, in paragraphs 2 and 2c of Article 57 and the Commission of the opinion and make it public.
8. The supervisory authority referred to in paragraph 2 of Article 57 shall take utmost account of the opinion of the European Data Protection Board and shall within two weeks after receiving the opinion, electronically communicate to the chair of the European Data Protection Board whether it maintains or will amend its draft measure and, if any, the amended draft measure, using a standardised format.
9. Where the supervisory authority concerned informs the chair of the European Data Protection Board within the period referred to in paragraph 8 that it does not intend to follow the opinion of the Board, in whole or in part, providing the relevant grounds, paragraph 2a of Article 57 shall apply.
10. (...)
11. (...)

## Article 58a

### Dispute Resolution by the European Data Protection Board

1. In the cases referred to in paragraph 2a of Article 57, the European Data Protection Board shall **settle the dispute** on the subject-matter submitted to it in order to ensure the correct application of this Regulation in individual cases.
2. The **European Data Protection Board shall take its position on the dispute** referred to in paragraph 1 (...) within one month from the referral of the subject-matter by a two-third majority of **its** members. The absence of any response shall not be deemed to signify agreement (...). This period may be extended by a further month on account of the complexity of the subject-matter.
3. The supervisory authorities concerned and the lead authority, as the case may be, may not adopt a decision on the subject-matter submitted to the Board under paragraph 1 during the period referred to in paragraph 2.
4. The **position on the dispute** referred to in paragraph 1 shall state the underlying reasons.
5. The **position on the dispute** referred to in paragraph 1 shall be binding (...) and addressed to the supervisory authorities concerned and the lead authority, as the case may be.
6. The Chair of the European Data Protection Board shall notify, without undue delay, the decision referred to in paragraph 1 to the supervisory authorities concerned and the lead authority (...) <sup>61</sup>. It shall inform the Commission thereof.
7. The supervisory authorities concerned shall, on the basis of the **settlement of the dispute** referred to in paragraph 1, **notably whether there is an infringement of this Regulation or not**, without undue delay and at the latest by one month after service of such **position on the dispute**, adopt their final decision on the **case** under the terms of Article 54, paragraphs 4a and 4b.

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<sup>61</sup> IE asked whether the Chair would notify this directly to the complainant.

*Article 59*

*Opinion by the Commission*<sup>62</sup>

(...)

*Article 60*

*Suspension of a draft measure*<sup>63</sup>

(...)

*Article 61*

*Urgency procedure*<sup>64</sup>

1. In exceptional circumstances, where the competent supervisory authority considers that there is an urgent need to act in order to protect rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Article 57 or the procedure referred to in Article 54a, immediately adopt provisional measures intended to produce legal effects (...) for the territory of its own Member State<sup>65</sup>, with a specified period of validity. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them, to the European Data Protection Board and to the Commission<sup>66</sup>.

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<sup>62</sup> Deleted in accordance with the request from BE, CZ, DE, ES, SE and UK. COM and FR reservation on deletion.

<sup>63</sup> Deleted at the suggestion of BE, CZ, DE, ES, IT, SE and UK. PT scrutiny reservation. COM and FR reservation on deletion.

<sup>64</sup> DE scrutiny reservation. COM explained that the urgency procedure was an essential part of the consistency mechanism. The existence of an urgency procedure was welcomed by several delegations (DE, ES, IT, NL), but also gave rise to many questions. There was lack of clarity surrounding the criteria which could warrant the taking of provisional measures (DE, FR, PT), in particular by another DPA. The need to respect certain procedural guarantees (e.g. giving notice to the data controller) prior to the taking of provisional measures was emphasised by FR.

<sup>65</sup> COM scrutiny reservation.

<sup>66</sup> The conditions under which the EDPB needed to be informed also gave rise to questions (ES). COM stated the obligation only existed in cross-border one-stop-shop mechanism cases.

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 **settlement of the dispute** from the European Data Protection Board, giving reasons for requesting such opinion or **settlement of the dispute**.
3. Any supervisory authority may request an urgent opinion or an urgent binding decision, as the case may be, from the European Data Protection Board where the 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 rights and freedoms of data subjects, giving reasons for requesting such opinion or **settlement of the dispute**, including for the urgent need to act.
4. By derogation from paragraph 7 of Article 58 and paragraph 2 of Article 58a, an urgent opinion or an urgent **settlement of the dispute** referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the European Data Protection Board.

## *Article 62*

### *Implementing acts*

1. The Commission may adopt implementing acts of general scope for:
  - (a) (...)<sup>67</sup>
  - (b) (...);
  - (c) (...);
  - (d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 57(5) and (6) and in Article 58(8).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

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<sup>67</sup> COM reservation on deletion.

2. (...)

3. (...)

*Article 63*

*Implementation of measures adopted by way of the consistency mechanism<sup>68</sup>*

(...)

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<sup>68</sup> Deleted further to EE and SI reservation and DE and DK scrutiny reservation.

## SECTION 3

### EUROPEAN DATA PROTECTION BOARD<sup>69</sup>

#### *Article 64*

#### *European Data Protection Board<sup>70</sup>*

- 1a. The European Data Protection Board is hereby established as body of the Union and shall have legal personality.
- 1b. The European Data Protection Board shall be represented by its Chair.
2. The European Data Protection Board shall be composed of the head<sup>71</sup> of one supervisory authority of each Member State or his/her representative and of the European Data Protection Supervisor<sup>72</sup>.
3. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, they shall nominate the head of one of those supervisory authorities as joint representative.
4. The Commission<sup>73</sup> shall have the right to participate in the activities and meetings of the European Data Protection Board and shall designate a representative without voting rights. The chair of the European Data Protection Board shall, communicate the Commission the activities of the European Data Protection Board.

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<sup>69</sup> Several Member States (BE, DE, HR, IT, PL and PT) pleaded in favour of granting the EDPB the power to take legally binding decisions in the context of the consistency mechanism and do away with the proposed Commission power to intervene. It was argued that the DPAs should have the same independence vis-à-vis the Commission, as vis-à-vis the Member States' authorities. COM argued that it was legally impossible under the T(F)EU to confer such powers on the EDPB.

<sup>70</sup> The term 'Board' seems inappropriate and could be replaced by Committee.

<sup>71</sup> BE, supported by CZ, CY, SE and SI, suggested adding "*or his/her representative*". IT suggested referring to Art. 68(2).

<sup>72</sup> NO pleaded in favour of the participation of the associated States. COM replied that the modalities for such participation were provided for in the association agreement.

<sup>73</sup> IT pleaded in favour of also including the Council and the Parliament.

## Article 65

### Independence

1. The European Data Protection Board shall act independently when performing its tasks or exercising its powers pursuant to Articles 66 (...) and 67.<sup>74</sup>
2. Without prejudice to requests by the Commission referred to in point (b) of paragraph 1 and in paragraph 2 of Article 66, the European Data Protection Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from anybody<sup>75</sup>.

## Article 66

### Tasks of the European Data Protection Board

1. The European Data Protection Board shall promote the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or at the request of the Commission, in particular:
  - (aa) monitor and ensure the correct application of this Regulation in the cases provided for in Article 57(2a) without prejudice to the tasks of national supervisory authorities;
  - (a) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;
  - (b) examine, on its own initiative or 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;
  - (ba) draw up guidelines for supervisory authorities concerning the application of measures referred to in paragraph 1, 1b and 1c of Article 53 and the fixing of administrative fines pursuant to Articles 79 and 79a<sup>76</sup>;

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<sup>74</sup> UK and SI scrutiny reservation.

<sup>75</sup> DE scrutiny reservation.

<sup>76</sup> DK reservation on the introduction of administrative fines in the text and meant that it was for national authorities to decide on that.

- (c) review the practical application of the guidelines, recommendations and best practices referred to in points (b) and (ba);
- (ca) 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 38 and 39;
- (caa) carry out the accreditation of certification bodies and its periodic review pursuant to Article 39a and maintain a public register of accredited bodies pursuant to paragraph 6 of Article 39a and of the accredited controllers or processors established in third countries pursuant to paragraph 4 of Article 39<sup>77</sup>;
- (cab) specify the requirements mentioned in paragraph 3 of Article 39a with a view to the accreditation of certification bodies under Article 39;
- (cb) give the Commission an opinion on the level of protection in third countries or international organisations, in particular in the cases referred to in Article 41;
- (d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in paragraph 2 and on matters submitted pursuant to paragraph 2c of Article 57;
- (e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities;
- (f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;
- (g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide;
- [(h) maintain a publicly accessible electronic register for consultation on confirmed main establishments referred to in Article 51c;
- (i) maintain a publicly accessible electronic register of decisions taken by supervisory authorities and courts on issues dealt with in the consistency mechanism.

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<sup>77</sup> HU said that paragraphs (caa) and (cab) were contrary to the text of the general approach reached in June 2014 (11028/14); it is for the national supervisory authority to do this.

2. Where the Commission requests advice from the European Data Protection Board, it may indicate a time limit, taking into account the urgency of the matter.
3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 87 and make them public.

#### *Article 67*

##### *Reports*

1. (...)
2. The European Data Protection Board shall draw up an annual report regarding the protection of natural persons with regard to the processing of personal data 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, the Council and the Commission.
3. The annual report shall include a review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1) as well as of the **settlement of the disputes** referred to in paragraph (...) **2a** of Article (...) **57**.

#### *Article 68*

##### *Procedure*

1. The European Data Protection Board shall<sup>78</sup> **settle disputes referred to in paragraph 2a of Article 57 by a two-third majority of its members. As regards decisions related to the tasks listed in Article 66 hereof, they shall be taken by a simple majority of its members (...).**

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<sup>78</sup> Some delegations suggested replacing this term that could give rise to confusion, with another, such as for instance "resolution". COM would consider an alternative.

2. The European Data Protection Board shall adopt its own rules of procedure **by a two-third majority of its members** and organise its own operational arrangements<sup>79</sup>.

*Article 69*

*Chair*

1. The European Data Protection Board shall elect a chair and two deputy chairpersons from amongst its members (...).<sup>80</sup>
2. The term of office of the chair and of the deputy chairpersons shall be five years and be renewable once<sup>81</sup>.

*Article 70*

*Tasks of the chair*

1. The chair shall have the following tasks<sup>82</sup>:
  - (a) to convene the meetings of the European Data Protection Board and prepare its agenda;
  - (aa) **to notify positions of the European Data Protection Board on the settlement of disputes pursuant to Article 58a to the lead supervisory authority and the supervisory authorities concerned (...)**;
  - (b) to ensure the timely performance of the tasks of the European Data Protection Board, in particular in relation to the consistency mechanism referred to in Article 57.

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<sup>79</sup> CZ asked with what majority the rules of procedure would be taken.

<sup>80</sup> COM found this problematic and maintained its reservation on deletion.

<sup>81</sup> NL thought that also the case where a chair or a deputy chairperson ceases to be a member of the European Data Protection Board[/Committee], should be addressed by the Regulation. However, this may be left to national law of the Member state concerned. COM and SK scrutiny reservation.

<sup>82</sup> BE suggesting adding another task, namely the chair's role towards the exterior.

2. The European Data Protection Board shall lay down the attribution of tasks between the chair and the deputy chairpersons in its rules of procedure.

*Article 71*

*Secretariat*

1. The European Data Protection Board shall have a secretariat. The European Data Protection Supervisor shall provide that secretariat<sup>83</sup>.
2. The secretariat shall provide analytical, administrative and logistical support to the European Data Protection Board.
3. The secretariat shall be responsible in particular for:
  - (a) the day-to-day business of the European Data Protection Board;
  - (b) the communication between the members of the European Data Protection Board, its chair, and the Commission and for communication with other institutions and the public;
  - (c) the use of electronic means for the internal and external communication;
  - (d) the translation of relevant information;
  - (e) the preparation and follow-up of the meetings of the European Data Protection Board;
  - (f) the preparation, drafting and publication of opinions, **positions on the settlement of disputes between supervisory authorities** and other texts adopted by the European Data Protection Board.

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<sup>83</sup> DE, EE, FR, ES, **HU, AT, IRL**, RO, PT, SI, SK and UK reservation on entrusting the EDPS with the EDPB secretariat. The risk of conflicts of interest of EDPS staff was also raised. FR and UK inquired about the costs. NL scrutiny reservation.

*Article 72*  
*Confidentiality*<sup>84</sup>

1. The discussions<sup>85</sup> of the European Data Protection Board shall be confidential.
  2. Access to documents submitted to members of the European Data Protection Board, experts and representatives of third parties shall be governed by Regulation (EC) No 1049/2001.
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<sup>84</sup> DE, EE, ES, RO, PL, PT, SE and UK reservation: it was thought that the EDPB should operate in a manner as transparent as possible and a general confidentiality duty was obviously not conducive to this. This article should be revisited once there is more clarity on the exact role and powers of the board, including the question whether the EDPS shall ensure the Secretariat.

<sup>85</sup> IT scrutiny reservation: it suggested replacing this term with 'minutes' or 'summary records', thereby distinguishing between confidentiality of decision-making and access to documents.